

Determination

Trade Me Limited and Limelight Software Limited [2018] NZCC 1

- The Commission:** Dr Mark Berry
Anna Rawlings
Dr Jill Walker
- Summary of application:** An application by Trade Me Limited for clearance to acquire, directly or indirectly, 100% of the shares in Limelight Software Limited, trading as Motorcentral.
- Determination:** Under section 66(3)(b) of the Commerce Act 1986, the Commerce Commission determines to decline to give clearance for the acquisition.
- Date of determination:** 8 March 2018

Confidential material in this report has been removed. Its location in the document is denoted by [].

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Executive summary

- X1. The Commission declines to give clearance for Trade Me Limited (Trade Me) to acquire, either directly or indirectly, 100% of the shares in Limelight Software Limited, trading as Motorcentral (Motorcentral) (the acquisition). The Commission is not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in markets for the supply of: (a) online motor vehicle classified advertising to motor vehicle dealers (the advertising market); and (b) dealer management system (DMS) software to independent motor vehicle dealers (the DMS market).
- X2. Specifically, the Commission is concerned about the loss of direct competition between Trade Me and Motorcentral in the DMS market and that Trade Me's acquisition of market power in the DMS market, in addition to its existing market power in the advertising market, would give it the ability and incentive to foreclose existing and potential competitors in both the advertising and DMS markets.
- X3. The acquisition would result in the same company owning Trade Me Motors, the leading provider of online motor vehicle classified advertising in New Zealand, and Motorcentral, the leading provider of DMS software to independent motor vehicle dealers. Motorcentral serves much of the DMS market, with its existing main rivals having a combined market share of only about []% of independent dealers, and the remaining approximately []% of independent dealers either use DealerBase or do not use a DMS. This share is declining over time as Motorcentral grows.
- X4. DMS software is the main tool that dealers use to upload and manage motor vehicle listings data on online classified advertising platforms such as Trade Me Motors.¹ With the acquisition, Trade Me would have a market share of approximately []% of the advertising market and would control DMSs holding almost []% of the total dealer listings on its platform, with approximately []%-[]% of independent dealer listings. These figures would likely grow after the acquisition. The remaining supply of dealer listings is fragmented, with the only other significant source being a supplier of a software product to franchise dealers, which accounts for about []% of Trade Me's total dealer listings.
- X5. Competition between Trade Me and Motorcentral in each other's primary markets would be lost with the acquisition:
- a. Trade Me has been developing its own software tool, DealerBase, [] and absent the acquisition would be likely to continue investing in it to make it more competitive.
 - b. Motorcentral also recently launched Need-a-Car, an online classified advertising platform for motor vehicles. Motorcentral is likely to continue to expand Need-a-Car absent the acquisition.

¹ We also refer to online classified advertising platforms as "listings platforms" in these reasons.

- X6. In order to grant clearance, the Commission must be satisfied that, despite the competition effects of the acquisition that we have identified, the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any market. The onus is on the applicant to satisfy the Commission.
- X7. To conduct our assessment, we considered the horizontal and vertical effects of the acquisition in the advertising and DMS markets separately.

Horizontal effects of the acquisition

- X8. We found that the loss of competition between DealerBase and Motorcentral would be likely to have the effect of substantially lessening competition in the DMS market due to horizontal effects alone. We consider that, without the acquisition, Trade Me would likely continue to invest in DealerBase to increase its competitiveness in the DMS market. Because of Motorcentral's strong position, and the limited competition it faces from its existing competitors, the rivalry between DealerBase and Motorcentral that would be likely to develop without the acquisition would be the main area of competition in the DMS market.
- X9. While there would be some loss of competition between Trade Me and Need-a-Car, we are satisfied that the acquisition would not be likely to have the effect of substantially lessening competition in the advertising market due to horizontal effects alone. There were some indications that Need-a-Car is well-positioned to challenge Trade Me in the advertising market. However, Need-a-Car is likely to face obstacles in expanding to become a stronger constraint on Trade Me. In particular, Need-a-Car is likely to find it difficult to attract a large audience to its platform.

Vertical effects of the acquisition

- X10. We consider that the vertical integration resulting from Trade Me's acquisition of Motorcentral would be likely to substantially lessen competition in both the advertising and DMS markets.
- X11. Our assessment of the vertical effects of the acquisition in each of the advertising and DMS markets is interrelated. This is because a rival DMS's ability to interact with Trade Me, including by uploading listings data, greatly assists that DMS with being able to compete with Motorcentral. Likewise, a rival listings platform's ability to access listings data from Motorcentral's DMS enables that platform to compete in the advertising market with Trade Me.
- X12. We consider that Trade Me's ownership of Motorcentral would likely protect or enhance Trade Me's market power in the advertising and DMS markets by providing it with the ability and incentive to foreclose its actual and potential competitors in both these markets.
- X13. It is difficult to identify all the means by which Trade Me could seek to disadvantage its competitors in these markets as a result of the acquisition. However, based on the evidence obtained, we consider that Trade Me would likely have the ability and incentive to successfully:

- a. inhibit the interaction between each of Trade Me’s listings platform and Motorcentral’s DMS with competing businesses: this conduct would likely include making it more difficult or costly for competing listings platforms to access listings data held by Motorcentral (in addition to that held in DealerBase), and making it more difficult or costly for rival DMSs to send listings data to the Trade Me platform; and/or
 - b. preferentially improve the interaction between Trade Me and Motorcentral: this conduct would likely include faster and more data-rich uploading of vehicle listings data from Motorcentral to Trade Me, and preferential access to Trade Me products and advertising performance data in Motorcentral.
- X14. Our view is that this conduct, if engaged in, would be likely to make competitors’ offerings in the advertising and DMS markets, including those of potential new entrants, significantly less attractive in terms of both price and quality. This would have the likely effect of delaying or preventing entry and expansion in both the advertising and DMS markets.
- X15. First, in relation to the advertising market, while foreclosure would make it more difficult for existing competitors to expand, we consider that the scope for harm is likely to be greater in relation to potential competition. While we found that Need-a-Car is unlikely to develop into a stronger constraint on Trade Me, overseas players with an existing substantial audience base in New Zealand such as Facebook are a significant threat to Trade Me.
- X16. While it is possible that there are other ways of entering the advertising market, the recent instances of entry that we have observed in New Zealand have been assisted by the new entrant entering into a relationship with Motorcentral. Although global players may have an existing audience base which could be leveraged in the advertising market, we consider that restricting potential entrants’ access to listings data in Motorcentral is likely to delay or prevent entry into the advertising market. The value Trade Me would place on delaying or preventing entry and expansion would likely substantially outweigh any losses to Trade Me from dealers switching away from Motorcentral.
- X17. Second, we consider that a vertically integrated Trade Me would have a similar impact in the DMS market. We understand that there are significant existing obstacles which likely make entry and expansion in the DMS market difficult. It is likely that Trade Me’s acquisition of Motorcentral would significantly change market conditions to make it even harder for rival DMS providers to enter and expand. Trade Me would likely have the ability and incentive to make it difficult for rival DMS providers to integrate with Trade Me’s online classified advertising platform and at the same time give dealers using Motorcentral preferential access to its platform.
- X18. As such, we are not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the advertising and DMS markets. We consider that the acquisition would likely result in Trade Me acting to

reduce competition in both these markets, in particular by delaying or preventing meaningful entry.

- X19. The effect of this conduct would be to make dealers substantially worse off than they would be if the acquisition did not go ahead. We consider that dealers would likely face some combination of higher prices, reduced quality and less innovation in the advertising and DMS markets than they would if the acquisition did not proceed.

The acquisition

Summary of the acquisition

1. On 11 July 2017 the Commission registered an application (the application) under section 66(1) of the Commerce Act 1986 (the Act) from Trade Me seeking clearance to acquire, directly or indirectly, 100% of the shares in Motorcentral.
2. Trade Me is an online classified advertising platform based in New Zealand. It entered into a sale and purchase agreement with the owners of Motorcentral on [] 2017 to acquire Motorcentral. Motorcentral operates a DMS, which is the main software tool that motor vehicle dealers use to manage their businesses.

The applicant's rationale for the acquisition

3. Trade Me submitted that “[a]s a technology-led, internet-based service provider, Motorcentral’s business model aligns with Trade Me’s core purpose of connecting parties and transactions. Accordingly, Trade Me has identified Motorcentral as a well-run business that is a good fit for the Trade Me Group”.²
4. Trade Me identified “a number of synergies / benefits for it, and for motor vehicle dealers, from the acquisition of Motorcentral”, including better information for advertisers on advertising performance and [].³

Our decision

5. The Commission declines to give clearance to the acquisition as it is not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the advertising and DMS markets in New Zealand.

Our framework

6. Our approach to analysing the competition effects of mergers and acquisitions is based on the principles set out in our Mergers and Acquisitions Guidelines.⁴
7. Of particular relevance to this acquisition, where the merging parties compete in the same market, we assess whether the loss of direct competition between the two would be likely to substantially lessen competition in that market. Where the merging parties operate in different but related markets, we assess whether the acquisition would likely give the merged entity a greater ability or incentive to engage in conduct that prevents or hinders rivals from competing effectively in either, or both, of those related markets.

² Application at [4.3].

³ Application at [4.5].

⁴ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2013).

The substantial lessening of competition test

8. As required by the Act, we assess acquisitions using the substantial lessening of competition test.
9. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).⁵
10. We make a pragmatic and commercial assessment of what is likely to occur in the future, with and without the acquisition, based on the information we obtain through our investigation and taking into account factors such as market growth and technological changes.
11. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),⁶ or reduce non-price factors such as quality or service below competitive levels.
12. A lessening of competition includes preventing or hindering competition.⁷ Competition may be hindered by delaying or impeding it, including by creating an obstacle or impediment to competition.⁸
13. Determining the scope of the relevant market or markets can be an important tool in determining whether a substantial lessening of competition is likely.
14. We define markets in the way that we consider best isolates the key competition issues that arise from the acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.⁹

When a lessening of competition is substantial

15. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.¹⁰ Some courts have used the word 'material' to describe a lessening of competition that is substantial.¹¹

⁵ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

⁶ Or below competitive levels in a merger between buyers.

⁷ Commerce Act 1986, s 2.

⁸ *Commerce Commission v Port Nelson* (1995) 6 TCLR 406 (HC) at 435, approved by the Court of Appeal at *Port Nelson v Commerce Commission* [1996] 3 NZLR 554 at 566.

⁹ Commerce Act 1986, s 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

¹⁰ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

¹¹ *Ibid*, at [129].

16. Consequently, there is no bright line that separates a lessening of competition that is substantial from one which is not. What is substantial is a matter of judgement and depends on the facts of each case.¹² Ultimately, we assess whether competition will be substantially lessened by asking whether consumers in the relevant market(s) are likely to be adversely affected in a material way.

When a substantial lessening of competition is likely

17. A substantial lessening of competition is ‘likely’ if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur.¹³

The clearance test

18. We must clear an acquisition if we are satisfied that the acquisition would not be likely to substantially lessen competition in any market.¹⁴ If we are not satisfied – including if we are left in doubt – we must decline to clear the acquisition.
19. In *Woolworths* the Court of Appeal held that “the existence of a ‘doubt’ corresponds to a failure to exclude a real chance of a substantial lessening of competition”.¹⁵
20. The burden of proof lies with Trade Me, as the applicant, to satisfy us on the balance of probabilities that the acquisition is not likely to have the effect of substantially lessening competition.¹⁶ The decision to grant or refuse a clearance is necessarily to be made on the basis of all the evidence.¹⁷ We will sometimes have before us conflicting evidence from different market participants and must determine what weight to give the evidence of each party.¹⁸

Parties

Trade Me

21. Trade Me is a wholly-owned subsidiary of Trade Me Group Limited, which is listed on the NZX. Trade Me estimates that approximately 1.7 million New Zealanders actively buy or list something for sale on Trade Me each month.¹⁹
22. Trade Me operates an online motor vehicle auction and classified advertising platform under the name Trade Me Motors, which we discuss further below.
23. Trade Me also operates several other motoring services:

¹² *Mergers and Acquisitions Guidelines* above n4 at [2.23].

¹³ *Woolworths & Ors v Commerce Commission* (HC) above n10 at [111].

¹⁴ Commerce Act 1986, s 66(3)(a).

¹⁵ *Commerce Commission v Woolworths Ltd* (CA) above n5 at [98].

¹⁶ *Commerce Commission v Southern Cross Medical Care Society* (2001) 10 TCLR 269 (CA) at [7] and *Commerce Commission v Woolworths Ltd* (CA) above n5 at [97].

¹⁷ *Commerce Commission v Woolworths Ltd* (CA) above n5 at [101].

¹⁸ *Brambles New Zealand Ltd v Commerce Commission* above n9 at [64].

¹⁹ Email from Russell McVeagh to the Commerce Commission (28 September 2017).

- 23.1 AutoBase, another online motor vehicle listing website.²⁰ AutoBase differs from Trade Me in that it only lists classified advertisements (not auctions) from registered motor vehicle dealers (not private sellers). All listings appearing on AutoBase also appear on Trade Me;²¹
- 23.2 DealerBase, a software tool (which we describe in more detail below); and
- 23.3 MotorWeb, which packages and sells motor vehicle information and reports to dealers and consumers as well as to finance companies, insurers, and others.²² These reports include, in particular, Vehicle Information Reports (VIRs), but also vehicle valuations, sale and purchase agreements and loan agreements. MotorWeb also offers mechanical breakdown insurance. Trade Me is currently in the process of [].²³

Motorcentral

24. Motorcentral (the trading name of Limelight Software Limited, a privately-held New Zealand company) supplies DMS software, and website design and management services, to motor vehicle dealers in New Zealand. Motorcentral has been operating since 2011.²⁴
25. Motorcentral also offers a number of other services, including website design and an automated bidding service for Japanese used car auctions.²⁵
26. Motorcentral's revenue for the financial year ended 31 March 2017 was \$[], of which []% was from sales of its core DMS, []% from sales of bolt-on products to its core DMS, and []% from website design.²⁶

Industry background

Motor vehicle sellers

27. There are two types of motor vehicle sellers:
- 27.1 Private sellers, which are individuals that transact directly with vehicle buyers; and
- 27.2 Motor vehicle dealers, which fall into two categories:
- 27.2.1 Franchise dealers, which operate under franchise arrangements with one or more vehicle manufacturers. Franchise dealers sell new cars

²⁰ AutoBase www.autobase.co.nz. Trade Me acquired AutoBase and DealerBase in 2012 from a company called AutoBase. Trade Me closed AutoBase following our decision on this application.

²¹ Trade Me's Response to Letter of Issues, 14 September 2017, at [140(a)].

²² MotorWeb www.motorweb.co.nz.

²³ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

²⁴ Trade Me's Response to Letter of Issues, 14 September 2017, at [45].

²⁵ Application at [3.7].

²⁶ Application at [3.8]. The remaining []% is split between Car Check (VIRs, []%), and "Other" ([]%).

under these arrangements, and usually also sell used cars (such as trade-ins). Franchise dealers often also offer parts and workshop services; and

27.2.2 Independent dealers, which are those dealers who are not in franchise arrangements with manufacturers. Accordingly, these dealers do not sell new cars, but they typically sell used cars from a range of manufacturers. These dealers are commonly referred to as “used car dealers”.²⁷

28. Below, references to “dealers” include both franchise and independent dealers. We use “franchise dealers” and “independent dealers”, respectively, when referring to those particular types of dealers.
29. Trade Me’s internal documents indicate that private sellers account for approximately []% of the vehicle listings on Trade Me, while dealers account for approximately []%.²⁸ The data in those documents did not provide a further breakdown according to independent versus franchise dealers, although the significant majority is likely to come from independent dealers, given that most vehicles listed on Trade Me are used cars.²⁹
30. Motorcentral’s internal strategy documents estimate that there are approximately [] independent dealers in New Zealand.³⁰ A Trade Me internal document indicates that there may be up to [] independent dealers in New Zealand.³¹

Motor vehicle advertising

31. Vehicle sellers buy advertising to market their vehicles for sale. There are a number of advertising options available to sellers. Sellers can choose from a range of platforms (online, print, radio, billboard) and, within those platforms, a range of types of advertisements.
32. The key types of online vehicle advertising are:
- 32.1 Classifieds: online classified advertising platforms (or ‘listings platforms’) attract vehicle sellers to list their vehicles on the platform. Buyers can then search on the platform for vehicles that meet their preferences;

²⁷ Any references to used motor vehicle dealers in these reasons are to independent dealers.

²⁸ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

²⁹ For example, in its [] document, Trade Me estimated that it had [] used vehicles listed (presumably over the preceding 12 months), compared with [] new vehicles: [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³⁰ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

³¹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

- 32.2 Display: display advertisements appear on web pages and include banner advertisements (a static or linked banner or logo); and
- 32.3 Search: search advertisements appear next to the results of search queries entered by internet users into internet search engines. They are selected on the basis of the search keywords chosen by the user.
33. The most common types of print vehicle advertising are classifieds and display advertisements.
34. Trade Me estimates that the vehicle classifieds advertising sector – including both online classified advertising platforms and print classifieds – has revenue of about \$[] per year, [] of which comes from online classified advertising platforms.³²

Trade Me Motors

35. Trade Me is mainly active in online vehicle classifieds advertising through its Trade Me Motors listings platform, although it also offers online display advertising to motor vehicle dealers. Trade Me Motors lists vehicles for sale by both registered motor vehicle dealers and private sellers.³³ Trade Me estimates that [] individual users actively browse a Trade Me Motors page each month.³⁴
36. The number of active motor vehicle listings³⁵ on Trade Me Motors on 1 January 2018 was [] vehicles,³⁶ most of which were used vehicles.³⁷
37. Trade Me charges monthly fees to dealers for motor vehicle classified advertising. Trade Me's fee structure is a tiered, package-based system: dealers choose a "package" (currently Basic, Torque, or Turbo); and the charge for that package increases based on the maximum number of listings the dealer wishes to upload. By way of example, the "Basic" package for a dealer who wishes to upload 10 vehicle listings costs \$429 per month; whereas the "Turbo" package for a dealer who wishes to upload 700 vehicle listings costs \$8,999 per month.³⁸

³² [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³³ Trade Me Motors www.trademe.co.nz/motors. References to "Trade Me" in these reasons include Trade Me Motors.

³⁴ Trade Me response to Commerce Commission information request dated 30 August 2017 (14 September 2017) at 4.

³⁵ That is, cars, rather than boats, motorbikes, or any other vehicle listed on Trade Me.

³⁶ This number includes both dealer and private listings – [] ([]%) of the [] vehicles were dealer listings: Email from Russell McVeagh to Commerce Commission (31 January 2018).

³⁷ As mentioned above, for example, in its [], Trade Me estimated that it had [] used vehicles listed (presumably over the preceding 12 months), compared with [] new vehicles: [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³⁸ Fees (ex GST) current as at 1 November 2017. Trade Me's current motor vehicle dealer ratecard and other dealer advertising information is available at www.dealerbase.co.nz/resources.aspx.

38. Trade Me also offers additional premium classified advertising products, primarily “Feature” and “Super Feature” options (which apply to specific vehicle listings). These products allow dealers to make specific vehicle listings appear more prominently to users. Trade Me also offers other premium classified advertising products, including listings subtitles, and a virtual showroom featuring links to a dealer’s listings. Dealers are able to purchase some of Trade Me’s premium advertising products through DealerBase []. Trade Me said that most of its sales of premium advertising are [].³⁹
39. Trade Me’s total motor vehicle classifieds advertising revenue in the financial year ended June 2017 was approximately \$[]: []% (\$[]) from dealer listings; and the remainder from private sellers.⁴⁰
40. Of Trade Me’s dealer listings revenue, \$[] came from dealers uploading listings data via a DMS, and \$[] from dealers listing their vehicles on Trade Me manually. From dealers listing via a DMS, Trade Me’s revenue from listing fees was \$[], and its revenue from dealer purchases of premium advertising products was \$[].⁴¹

Need-a-Car

41. In September 2017, Motorcentral introduced an online classified advertising platform called Need-a-Car, which carries listings from dealers only (not private sellers).⁴² Need-a-Car currently holds over 19,000 vehicle listings,⁴³ sourced mostly from Motorcentral’s DMS, [].⁴⁴

Other listings platforms

Autotrader

42. Autotrader, owned by Bauer Media (Bauer), is New Zealand’s second largest online classified advertising platform for motor vehicles after Trade Me.⁴⁵ As well as its listings platform, Autotrader offers print classified advertising.
43. Autotrader was founded as a print classified vehicle advertising magazine around 35 years ago, and launched its website approximately 12 years ago.⁴⁶ Autotrader’s print

³⁹ Commerce Commission interview with Trade Me (16 February 2018).

⁴⁰ Trade Me’s Response to Letter of Issues, 14 September 2017, at [109]; Commerce Commission interview with Trade Me (25 September 2017); and Email from Russell McVeagh to the Commerce Commission (28 September 2017).

⁴¹ Trade Me’s Response to Letter of Issues (14 September 2017), at [109] and Email from Russell McVeagh to the Commerce Commission (28 September 2017).

⁴² Need-a-Car www.needacar.co.nz.

⁴³ As at 27 February 2018. Need-a-Car held over 24,000 listings in late September 2017, soon after its launch, but its number of listings has dropped.

⁴⁴ Commerce Commission interview with Motorcentral (4 October 2017).

⁴⁵ Autotrader www.autotrader.co.nz. Autotrader is not related to entities of the same name in other countries, for example Autotrader.com or Autotrader.co.uk.

⁴⁶ Commerce Commission interview with Bauer (31 July 2017).

magazine ceased publishing about eight years ago, and then it was relaunched as a free pick-up magazine in early 2017.⁴⁷

44. Autotrader runs listings from [] dealers online (approximately [] of whom use Motorcentral as their DMS), and approximately [] in print (although only [] dealers list in Autotrader's print platform and not online).⁴⁸ Autotrader estimated that there are [] dealers who list with Autotrader and not with Trade Me.⁴⁹ Autotrader's website also feeds listings to two other websites: AA Car Fair and Yahoo, [].⁵⁰
45. Autotrader advised us that in January 2018 it had [] online classified listings, [] of which were from dealers using Motorcentral (approximately []%).⁵¹
46. Autotrader provided audience data using the metric of monthly page impressions for dealer classifieds relating to cars. Autotrader's audience on this metric in August 2017 was [] while Trade Me's was [].⁵²
47. Autotrader does not charge for placing advertisements but instead charges for the leads the advertisement generates for the dealer.

Driven

48. Driven operates an online classified advertising platform and print classifieds business for motor vehicles, as well as providing motoring news and vehicle reviews.⁵³ Driven is owned by NZME Limited, a New Zealand media and entertainment business.
49. Driven was launched approximately 18 months ago, and in October 2017 received approximately [] visits per week, although [] of these were to its online classified listings.⁵⁴ Driven is currently free for dealers to list vehicles on.
50. Driven carries listings from both dealers and private sellers, although most of its listings are from dealers: of Driven's approximately [] listings, only about [] are from private sellers.⁵⁵ Driven currently accepts uploads from DMSs including

⁴⁷ Commerce Commission interview with Bauer (31 July 2017).

⁴⁸ Email from Bell Gully to the Commerce Commission (12 September 2017) and [].

⁴⁹ [].

⁵⁰ Commerce Commission interview with Bauer (31 July 2017) and [], provided by email by Bell Gully to the Commerce Commission (16 October 2017).

⁵¹ Email from Bell Gully to the Commerce Commission (30 January 2018).

⁵² [], provided by email by Bell Gully to the Commerce Commission (12 September 2017); [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

⁵³ Driven www.driven.co.nz.

⁵⁴ Commerce Commission interview with NZME (4 August 2017) and Commerce Commission interview with NZME (11 October 2017).

⁵⁵ Commerce Commission interview with NZME (4 August 2017).

Motorcentral, Autoplay, and TopGear,⁵⁶ and NZME estimates that []% to []% of the vehicles on Driven are uploaded from Motorcentral.⁵⁷

Others

51. There are a number of other small online classified advertising platforms for motor vehicles operating in New Zealand, including Drivesouth (owned by Allied Press), ListSellTrade and The Car Yard.
52. There are also a number of print classified suppliers, including Autotrader (which, as discussed above, offers a free magazine), Driven (which offers a magazine inside the Wednesday and Sunday editions of the New Zealand Herald) and Fairfax (which offers print advertising in its national, regional, and local newspapers).

DMSs

Functions and features of DMSs

53. DMSs are the main software tool that dealers use to manage their businesses, and are the central repository for data about dealers' business activity.
54. DMSs typically include the following key features, which dealers require for the day-to-day management of their business:
 - 54.1 Inventory management: dealers use a DMS to keep track of their current stock of vehicles, including transaction data, automated creation of vehicle descriptions, and data from import companies and other entities (for example, the New Zealand Transport Agency). DMSs generally have the ability to export data about a dealer's inventory in a standardised form (usually an Excel spreadsheet, or a CSV or XML file);
 - 54.2 Digital advertising management: dealers use a DMS to upload vehicle listings data to listings platforms, and in some cases to purchase other types of advertisements (for example, display or search advertising on specific websites); and
 - 54.3 Customer relationship management (CRM): dealers use a DMS to manage their relationships with customers, including tracking leads generated by listings platforms ('leads' being customer enquiries about particular vehicles).
55. Software products which focus on inventory management and digital advertising management appear to sometimes be called "vehicle management systems" (VMSs), although use of this term is inconsistent.⁵⁸

⁵⁶ Trade Me told the Commission that []: Trade Me's Response to Letter of Issues, 14 September 2017, at [105(b)]. However, NZME told us that Driven also [], and that NZME []

: Commerce Commission interview with NZME (11 October 2017).

⁵⁷ Commerce Commission interview with NZME (4 August 2017).

56. Some DMSs also have other functions which, although not strictly necessary for all dealers' day-to-day management, dealers find useful to have included in their DMS. These features can include:
- 56.1 accounting modules (or integration with accounting software, such as Xero or MYOB);
 - 56.2 finance, insurance, and VIR purchase options; and
 - 56.3 workshop and parts functionality (to track vehicle maintenance and repair work, and to manage the dealer's vehicle parts inventory).
57. Functionality across different DMS products varies considerably, particularly because different dealers require DMSs with different levels of functionality. At a high level, franchise dealers tend to use more sophisticated and complex DMSs, whereas independent dealers tend to use more basic DMSs with less (or simpler) functionality. We discuss this further below under market definition.
58. There are also software products which offer only a limited amount of the functionality described above. In particular, these products generally lack some of the key features described above at paragraph 54. An example of this type of product is what Trade Me described as a "listings management tool".⁵⁹ This type of tool enables dealers to more conveniently manage their vehicle listings on online classified advertising platforms, for example by adding photos or videos. This type of product is often used by dealers (typically franchise dealers) in conjunction with a DMS.
59. Accordingly, there are differing views in the industry as to what constitutes a DMS. Some parties consider that only the fully-featured products offered to franchise dealers are DMSs,⁶⁰ whereas other parties categorise those products available to independent dealers as "lite" DMSs.⁶¹ We compare the features of various DMSs in Table 1 below.

⁵⁸ For example, Trade Me internal documents [].
⁵⁹ [], provided by email by Russell McVeagh to the Commerce Commission (28 September 2017). An example of a listings management tool is CarUpdater, operated by Webdesign Limited.

⁶⁰ See for example, Commerce Commission interview with [].

⁶¹ See for example, Commerce Commission interviews with [] and [].

Table 1: Comparison of DMS product functionality

	Motorcentral	DealerBase	Autoplay	Autoline (TSI)
Inventory management	Yes	Yes, basic	Yes	Yes
Data import and export (general)	Yes	Yes, but export is a paid extra ⁶²	Yes	Yes
Bulk upload of data to listings platforms	Yes	Yes (Trade Me only)	Yes	Yes
Digital advertising purchase (display/search advertising)	Yes (Facebook and Google)	Yes (Trade Me)	No	No
CRM/lead management	Yes	Yes, limited to Trade Me only	Yes (Sales Pipeline Package)	Yes
Finance and insurance	Yes, third-party integration	No	No	Yes
Accounting integration	Yes (plug-in for Xero/MYOB)	No	No	Yes (inbuilt)
Workshop/parts	No	No	No	Yes

The Motorcentral DMS

60. The core Motorcentral DMS product includes an inventory management system and functionality to upload listings data to a wide range of online advertising options (including dealers' own websites, Trade Me, and Autotrader). Motorcentral customers can purchase other services alongside the core Motorcentral DMS, all of which are accessed through the Motorcentral DMS software platform, including:
- 60.1 *AMPD CRM*, a CRM/lead management tool;
 - 60.2 *Auto Attendant*, a tool which automatically generates responses to customer enquiries online;
 - 60.3 *AdConnect*, which generates and sends display advertising to websites such as Google and Facebook;
 - 60.4 *CarCheck*, which provides VIRs at a set cost per report (similar to Trade Me's MotorWeb service). Motorcentral sources the information for its CarCheck VIRs from a third-party called CarJam; and
 - 60.5 plug-ins allowing integration with accounting software and Facebook, which integrates with the Motorcentral website to allow dealers to display inventory on their Facebook pages.

⁶² Except for dealers who purchase the higher priced advertising packages with Trade Me.

61. Motorcentral does not provide standalone accounting or parts/workshop functionality.
62. Motorcentral’s DMS product is used by at least [] dealer customers across 528 New Zealand dealerships.⁶³ Motorcentral told us that its average dealer customer is a small to medium used car dealer, [].⁶⁴
63. The Motorcentral DMS holds data for approximately [] vehicles which could be listed for sale.⁶⁵ Motorcentral is the largest source of listings data to Trade Me, providing approximately []% of Trade Me’s dealer listings (including both independent and franchise dealer listings) as at 1 January 2018.⁶⁶ Motorcentral is also the largest source of listings data to Trade Me’s listings platform competitors, Autotrader (approximately []% of its listings) and Driven ([]% to []% of its listings).⁶⁷

Trade Me’s DealerBase

64. DealerBase is a software tool offered free to all dealers who purchase Trade Me advertising packages (currently over 1,000 dealers).⁶⁸ Trade Me describes DealerBase as “a vehicle management system provided free by Trade Me Motors, which works as a stand-alone inventory system. It can also work with your existing stock system to make putting your vehicles on Trade Me Motors a simple and straight forward process”.⁶⁹
65. Although Trade Me refers to DealerBase as a DMS in several of its internal documents,⁷⁰ Trade Me submitted in its application that (unlike Motorcentral) DealerBase is not a more fully-featured DMS product. Trade Me said that:⁷¹

... most dealers that use DealerBase will also use separate DMSs, because the DealerBase dealer interface software is not a substitute for a functional DMS. To the extent that there are some dealers that are so small that they can manage their inventory and operations on a basic excel spreadsheet, they may only use DealerBase and other simple tools, but that does not mean DealerBase is a substitute for a DMS for the balance of the market.

⁶³ Motorcentral www.motorcentral.co.nz (accessed 27 February 2018) and Motorcentral response to Commerce Commission information request dated 12 September 2017 (19 September 2017) at 7.

⁶⁴ Commerce Commission interview with Motorcentral (4 October 2017).

⁶⁵ This figure is the number of vehicles [], a proxy for the vehicles that are currently available for sale: Motorcentral response to Commerce Commission information request dated 4 October 2017 (5 October 2017) at 3.

⁶⁶ Email from Russell McVeagh to the Commerce Commission (31 January 2018).

⁶⁷ Email from Bell Gully to the Commerce Commission (30 January 2018); Commerce Commission interview with NZME (4 August 2017).

⁶⁸ DealerBase www.dealerbase.co.nz. See also: Vehicle Dealers | Help www.trademe.co.nz/help/645/vehicle-dealers (accessed 27 February 2018).

⁶⁹ Vehicle Dealers | Help www.trademe.co.nz/help/645/vehicle-dealers (accessed 27 February 2018).

⁷⁰ See for example “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 18; and [], provided by

⁷¹ email by Russell McVeagh to the Commerce Commission (14 September 2017). Application at [9.15].

66. DealerBase includes basic inventory management functions (including integration with NZTA data) and limited CRM tools; as well as the ability to export vehicle data from DealerBase in a standard format (although Trade Me charges a monthly fee for this feature to all dealers except those purchasing the higher priced Trade Me advertising packages). Trade Me []. DealerBase also provides dealers with the ability to purchase some of Trade Me’s premium advertising products, [].
67. Trade Me’s internal documents show that a number of dealers (approximately [] in August 2016) use DealerBase as their main software tool and do not use a separate DMS.⁷² However, the number of independent dealers using DealerBase in this manner has declined, as they have switched to using a separate DMS product, such as Motorcentral, as their main inventory management system. Because dealers can use their DMS to upload their listings to Trade Me and other listings platforms, they generally have less need to log in to DealerBase. Dealers using DealerBase as their main software tool are the third largest source of dealer listings to Trade Me (after Motorcentral and []), accounting for approximately []% of Trade Me’s dealer listings.⁷³
68. Further, as we discuss below in the “Without the acquisition” section, Trade Me has been seeking to [].
69. Although dealers can use their DMS in order to list their vehicles on Trade Me, all dealer listings uploaded to Trade Me via a DMS (or other uploading tool) are technically first uploaded to DealerBase in order to then automatically be listed on Trade Me.⁷⁴ That is, DMSs or other tools that export listings to ‘Trade Me’ actually export those listings to DealerBase, and those listings then automatically appear on Trade Me without any further dealer intervention.⁷⁵

Other DMSs

Autoplay

70. Autoplay is an Auckland-based business that provides products with some DMS functionality, although its products are generally used in conjunction with a more fully-featured DMS.⁷⁶ Autoplay []. Instead, Autoplay

⁷² [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

⁷³ Email from Russell McVeagh to the Commerce Commission (31 January 2018).

⁷⁴ Commerce Commission interview with Trade Me (25 September 2017).

⁷⁵ Accordingly, Trade Me’s reference to “over 1,000” dealers using DealerBase includes dealers who use DealerBase in this passive way (as a gateway to listing on Trade Me), as well as dealers who actively use DealerBase to manage their inventory and/or their premium advertising products.

⁷⁶ Autoplay – Smart Digital Tools www.autoplay.co.nz; Commerce Commission interviews with Autoplay (25 July and 23 November 2017). Autoplay also provides real estate virtual show home services. In relation to Autoplay’s products being used alongside other DMSs, see for example Commerce Commission interviews with [] and [].

described its products to the Commission as [].⁷⁷
Autoplay's offering includes two packages:

70.1 Sales Pipeline Package, which is a lead management and CRM tool; and

70.2 Data & Web Tool Package, an inventory management, import, export, and upload tool.

71. As at September 2017, Autoplay held data for approximately [] vehicles, being approximately [] new and near-new vehicles, and approximately [] used vehicles.⁷⁸ Autoplay is [].⁷⁹

72. Autoplay is generally used by franchise dealers rather than independent dealers,⁸⁰ and as at September 2017, Autoplay had [] dealership customers using its Data & Web Tool Package.⁸¹

TopGear

73. TopGear is a DMS developed and operated by Fasttrac Systems Limited, a New Zealand company founded in 1988.⁸² The TopGear DMS provides inventory and sales management, uploads to listings platforms, accounting functionality, and extra modules including CRM and finance integration.⁸³ TopGear targets independent dealers.⁸⁴

74. TopGear is [].⁸⁵ TopGear has approximately [] independent dealer customers.⁸⁶

Others

75. There are a number of other DMS providers in New Zealand which target either independent dealers or franchise dealers. Those targeting independent dealers include Grant Day and Autocloud (operated by Zeanz), and those targeting franchise dealers include Autoline (operated by TSI), Revolution, and Pentana.

⁷⁷ Commerce Commission interviews with Autoplay (25 July and 23 November 2017).

⁷⁸ [].

⁷⁹ Email from Russell McVeagh to the Commerce Commission (31 January 2018).

⁸⁰ "Trade Me Board Paper May 2017", submitted as Confidential Appendix Four to Application, at 19.

⁸¹ [].

⁸² Fasttrac Systems www.fasttrac.co.nz/features.htm.

⁸³ Commerce Commission interview with TopGear (14 September 2017).

⁸⁴ Commerce Commission interview with TopGear (14 September 2017).

⁸⁵ Email from Russell McVeagh to the Commerce Commission (31 January 2018).

⁸⁶ Commerce Commission interview with TopGear (14 September 2017).

Other parties

Facebook

76. Facebook provides motor vehicle dealers (and private sellers) with several options to purchase advertising products.⁸⁷ For example, setting up and managing a Facebook Page provides dealers with display advertising, and allows users to find details about, interact with, and review that business. Facebook also provides specific display advertising products for car dealers, who can set up a tab on their Page which contains links to specific vehicles on the dealer’s website.⁸⁸
77. Facebook also operates Facebook Marketplace, a hub within its app for individuals to post classified listings for goods, including motor vehicles. Like Trade Me, Facebook Marketplace is a searchable online classified advertising platform. In New Zealand, Facebook Marketplace is currently only available to private individuals.⁸⁹
78. However, in the United States, Facebook has recently partnered with DMSs and listings platforms to source dealer vehicle listings to advertise on Facebook Marketplace.⁹⁰ That is, as well as the display advertising dealers can place through their Facebook Page, dealers in the United States can also post classified advertisements for their vehicles on Facebook’s Marketplace platform. [].⁹¹ In relation to its expansion of Facebook Marketplace into dealer classified advertising, Facebook told us that [].⁹²

Google

79. Google provides online search advertising via its AdWords service, through which advertisements can be purchased that link to searches made through Google’s core search engine.⁹³ Advertisements purchased through AdWords are labelled as advertisements and appear at the top of a user’s Google search results. Google also offers display advertising, for example video advertising on YouTube, but does not offer online classified advertising in New Zealand.

⁸⁷ Generally, see: How to use Facebook for business marketing | Facebook Business en-gb.facebook.com/business/overview.

⁸⁸ Facebook for automotive businesses: adverts and marketing solutions | Facebook Business www.facebook.com/business/industries/automotive.

⁸⁹ That is, dealers in New Zealand cannot currently access Facebook Marketplace and list their vehicles through their dealership Page.

⁹⁰ Facebook Newsroom “Marketplace Adds More Options for US Car Shoppers” (26 October 2017) <https://newsroom.fb.com/news/2017/10/marketplace-adds-more-options-for-us-car-shoppers/> (accessed 26 January 2018); Facebook Help “List your dealership inventory on Marketplace” <https://en-gb.facebook.com/business/help/562933087372962> (accessed 26 January 2018).

⁹¹ Commerce Commission interview with Facebook (16 January 2018); Email from [] to the Commerce Commission (20 February 2018).

⁹² Email from Facebook to the Commerce Commission (14 November 2017); Commerce Commission interview with Facebook (16 January 2018).

⁹³ Google PPC Online Advertising | Google AdWords adwords.google.com/home/.

Market definition

Our approach to market definition

80. Market definition is a tool that helps identify and assess the close competitive constraints that Trade Me would face. Determining the relevant market requires us to judge whether, for example, two products or services are sufficiently close substitutes in demand and/or supply as a matter of fact and commercial common sense to fall within the same market.
81. We define markets in the way that best isolates the key competition issues that arise from an acquisition.⁹⁴ In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services that fall outside the market but that still impose some degree of competitive constraint.
82. We identify a relevant market by considering demand-side and supply-side substitutes to the product in question. In considering demand-side substitution, we ask, if a hypothetical monopolist of the product in question increased prices by a small but significant non-transitory amount (a SSNIP), whether sufficient customers of the product in question would switch to other types of products to defeat the SSNIP. In considering supply-side substitution, we ask, if prices increased,⁹⁵ whether candidate firms for inclusion in a market would easily, profitably, and quickly (generally within one year) switch sufficient production to the products or locations in question.⁹⁶

Advertising market

83. Trade Me submitted that the relevant advertising market is the national market for the supply of motor vehicle advertising to motor vehicle dealers.⁹⁷
84. For the reasons that follow, we consider that the relevant advertising market is the national market for the supply of online motor vehicle classified advertising to dealers.

Two-sided platforms

85. Websites that display online advertisements are ‘two-sided platforms’, in that they bring together two distinct types of customer – advertisers and audiences – across the ‘platform’. In this case, on the advertising side of a platform, motor vehicle dealers and private sellers post classified advertisements for their vehicles, which are viewed by potential buyers on the audience side.
86. These types of platforms are subject to cross-platform network effects or “feedback loops”. That is, an increase in the number of buyers regularly browsing and buying

⁹⁴ *Mergers and Acquisitions Guidelines* above n4 at [3.10]-[3.12].

⁹⁵ By at least a SSNIP.

⁹⁶ *Mergers and Acquisitions Guidelines* above n4 at [3.16].

⁹⁷ Application, at [9.4].

on the audience side makes the platform more attractive for dealers and private sellers to advertise on. Likewise, as more sellers advertise, the platform becomes more attractive to buyers who are likely to benefit from seeing more vehicles on offer. The feedback loop can impose a constraint on market participants, particularly if a price increase on one side of the platform has knock-on effects for those on the other side of the platform.

87. However, such feedback loops can also create an advantage for incumbent platforms, as entrants require a critical mass of customers on both sides to be effective competitors. Network effects can also amplify anticompetitive effects – for example, if access to customers on one side of the platform is foreclosed to rivals, customers on the other side of the platform may find rivals’ platforms less attractive. Feedback loops can sometimes result in the relevant market ‘tipping’ towards a large incumbent platform.
88. When analysing markets involving two-sided platforms, we take account of any relevant cross platform feedback loops in our competition analysis. Whether this is best done by defining a single market incorporating both sides of the platform, or by defining two (or more) markets on each side of the platform depends on the relevant fact situation and what makes the analysis most tractable.⁹⁸
89. In this case, the evidence suggests that product substitution options on each side of the relevant platforms are different. We have distinguished multiple markets on the advertiser side of the platform (reflecting the different requirements of those customer groups, as discussed at paragraphs 117-120), while competing listings platforms compete to attract “eyeballs” on the other side of the platform. Consequently, to ensure that we accurately assess the potential competitive effects on the advertiser side of the relevant platforms, and to make our analysis more tractable, we have defined separate markets on each side of these listings platforms – the supply of online motor vehicle classified advertising to potential vehicle buyers (the audience market) and the supply of online motor vehicle classified advertising to motor vehicle dealers (the advertising market).
90. As is commonly the case for two-sided platforms, the value of the platform is monetised on only one side. In this case, it is on the dealer/seller side of the platform. Our analysis has focused on the competitive effects of the acquisition on this side of the platform. The competition effects of the acquisition in the advertising market could also manifest in the audience market (for example, a lessening of competition could result in reductions in the quality of listings platforms, harming potential vehicle buyers). However, on the evidence before us, we do not consider that the competition effects in the audience market would be more significant than the competition effects in the advertising market. Accordingly, our analysis focuses on the competitive impact of the acquisition in the advertising market.

⁹⁸ See for example OECD (2017) “Rethinking Antitrust Tools for Multi-Sided Platforms: Introduction” at 5-6.

Product dimension

91. Trade Me submitted that there is significant competition and substitution between all types of motor vehicle advertising including online and print, and classified and display. We therefore examined whether the relevant market included other platforms and types of advertising in addition to online motor vehicle classified advertising.
92. The evidence we found indicated that other platforms and types of advertising are not sufficiently close substitutes to be included in the same market as online motor vehicle classified advertising.

Parties' views

93. Trade Me noted that the Australian Competition and Consumer Commission (ACCC) had, in a previous decision, defined a market for the supply of online motor vehicle classified advertising to dealers.⁹⁹ This market definition excluded other platforms (eg, print advertising), as well as other types of advertising (eg, display¹⁰⁰ and search advertising¹⁰¹).
94. However, Trade Me considered that this market definition was too narrow and did not reflect the various competitive constraints that it faces in New Zealand. Trade Me said that “its primary competitive constraints are demonstrating the ROI [return on investment] of Trade Me Motors advertising in comparison to other advertising formats, including print advertising, Google and Facebook, other online platforms, and other advertising formats (billboards, TV, radio)”.¹⁰²
95. Trade Me submitted that there is significant competition and substitution between different advertising media in New Zealand for dealers' expenditure. Trade Me told the Commission that print and online classified advertising for motor vehicles serve the same purpose – to tell the public that a specific vehicle is for sale.¹⁰³ Trade Me also considered that, in terms of online advertising, “drawing a defined line around ‘classified’ versus ‘display’ advertising suggests a degree of clarity that does not exist in practice”.¹⁰⁴ Trade Me also submitted that Google, which offers a search advertisement product, is an important competitive constraint.¹⁰⁵

⁹⁹ Australian Competition and Consumer Commission *Carsales.com Limited/Trading Post* Public Competition Assessment (13 June 2013), at [61].

¹⁰⁰ As mentioned above, display advertisements appear on web pages and include banner advertisements (a static or linked banner or logo). See for example: “Display Advertising” Marketing Land. <https://marketingland.com/library/display-advertising-news>.

¹⁰¹ As mentioned above, search advertisements appear next to the results of search queries entered by internet users into internet search engines. They are selected on the basis of the search keywords chosen by the user. See for example: *Google/DoubleClick* European Commission Case No. COMP/M.4731, at [11].

¹⁰² Application at [9.4]. See also Commerce Commission interviews with Trade Me (25 September and 24 November 2017); Trade Me's Response to Letter of Issues, 14 September 2017, at [157]–[160]; and Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [31].

¹⁰³ Commerce Commission interview with Trade Me (24 November 2017).

¹⁰⁴ Trade Me's Response to Letter of Issues, 14 September 2017, at [152] and Commerce Commission interview with Trade Me (25 September 2017).

¹⁰⁵ Trade Me's Response to Letter of Issues, 14 September 2017, at [158].

96. Accordingly, Trade Me considered that the relevant market extended to include all types of motor vehicle advertising, including other platforms (mainly print) and other types of advertisements (eg, display and search advertising, including Google and Facebook).¹⁰⁶

Others' views

97. Feedback from listings platforms generally supported the view that the relevant market is the supply of online motor vehicle classified advertising to dealers.

97.1 Bauer, owner of Autotrader, submitted that the market should be limited to online motor vehicle classified advertising to dealers.¹⁰⁷ Bauer submitted that there is no compelling reason for the Commission to depart from the ACCC's reasoning in *Carsales*, in which the ACCC defined such a market. Bauer also submitted that

[redacted]; and that sites like Trade Me and Autotrader allow dealers to "[redacted]".

97.2 [redacted], told the Commission that its motor vehicle classified advertising business competed with Trade Me rather than Google or Facebook.¹⁰⁸ Similarly, [redacted] noted that Facebook and Google were not tools for consumers to compare a wide range of vehicles (although they may be tools to advertise a dealership generally), and accordingly [redacted] were its main competitors.¹⁰⁹

97.3 Overseas entities in this sector Carsales.com.au (Carsales) and Cox Automotive both also drew a distinction between the functions of online display and online classified advertising for motor vehicles.¹¹⁰

98. The print advertising providers we spoke with generally considered their products to be different in nature to online classified advertisements. For example, Fairfax told us that,

[redacted].¹¹¹ Fairfax said that [redacted].¹¹² NZME stated that

¹⁰⁶ Application at [9.4]; Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [30]–[33]; Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [158]–[161]; and Commerce Commission interview with Trade Me (25 September 2017).

¹⁰⁷ Submission from Bauer (14 August 2017), at [3.1]–[3.2], [4.1]–[4.11]; [redacted]; and Commerce Commission interview with Bauer (22 August 2017).

¹⁰⁸ Commerce Commission interview with [redacted].

¹⁰⁹ Commerce Commission interview with [redacted].

¹¹⁰ Commerce Commission interviews with Cox Automotive (27 September 2017) and Carsales.com.au (28 September 2017).

¹¹¹ Commerce Commission interview with Fairfax Media (1 August 2017).

¹¹² Commerce Commission interview with Fairfax Media (1 August 2017).

[
].¹¹³

99. The dealers we spoke with tended to use a wide range of advertising methods, including online classifieds and display advertisements, print, Facebook and Google, and their own website. However, dealers generally indicated that print advertising was a complement to online advertising, rather than a substitute. Dealers noted that print served a different purpose to online advertising, in that it helps to build brand and better targets older or rural customers, but was also more expensive than online advertising. With respect to classifieds in particular, while there is some similarity in appearance between online and print classifieds, dealers said that the ability to search for specific cars on online classified advertising platforms is an important feature that distinguishes online from print classifieds.¹¹⁴
100. Although dealers indicated that they use display and search advertising, this was less common than classified advertising. Dealers commented that display advertising was useful for raising brand awareness, and search advertising was effective at driving traffic to their own websites, whereas classifieds advertising provides a targeted list of vehicles for sale for customers looking for a specific vehicle or type of vehicle.¹¹⁵ As such, dealers generally did not consider that display and search advertising were substitutes for classifieds.

Our assessment of substitutability between print and online advertising

101. The distinction between print and online advertising has been considered in a number of decisions by competition authorities, including the Commission.
102. As mentioned above, the ACCC examined the issue in its decision to oppose Carsales' proposed acquisition of Trading Post. It found:¹¹⁶

In terms of the two distinct groups of customers for online automotive advertising: car buyers (i.e. the audience) and advertisers using online automotive classifieds, the ACCC's assessment was that neither of these groups of customers was likely to find print classified to be a close substitute for online classifieds.

103. The European Commission (EC) also assessed the scope of the motor vehicle advertising market in its assessment of the proposed acquisition of joint control by APW and GMG over the company Emap. The EC did not find it necessary to conclude

¹¹³ Commerce Commission interview with NZME (4 August 2017).

¹¹⁴ See for example, Commerce Commission interviews with []; []; and [].

¹¹⁵ See for example Commerce Commission interviews with []; []; []; []; []; []; and [].

¹¹⁶ ACCC *Carsales* above n99 at [56].

on whether print and online advertising were part of the same market for the purposes of that decision, but did indicate a distinction between the two:¹¹⁷

As regards the delineation of classified vehicle advertising according to media used, the alternative market definitions could be i) classified vehicle advertising through all media, hence online and offline, or ii) online classified vehicle advertising.... Although the market investigation has shown that online and offline advertising compete to a certain extent, online advertising could be seen as a separate market. As opposed to offline advertising, online advertising is considered to be capable of reaching a more targeted audience in a more effective way.

104. In *Google/DoubleClick*, the EC considered the distinction between print and online advertising in some depth. After considering the applicant's argument that print and online advertising are in the same market, the EC concluded as follows:¹¹⁸

This broad market definition cannot be accepted, primarily because the market investigation revealed that offline and online advertising are perceived as separate markets by the majority of respondents. Furthermore, online advertising is used for specific purposes. As opposed to offline advertising, online advertising is considered to be capable of reaching a more targeted audience in a more effective way. Advertisers can precisely target their audience by combining information regarding geographical location, time of day, areas of interest, previous purchasing record of the user and search preferences. This option is not available in the case of offline advertising, for which the amount of 'wasted circulation' is undoubtedly higher. In addition to this specific targeting, respondents to the market investigation noted that online advertising has a unique reporting system that enables the advertiser to check exactly how many users have viewed the ad or clicked on it, moreover allowing a rapid 'retargeting' of the ad. Hence the measurement of the effectiveness of online ads can also be more precise compared with the traditional measurement systems used in offline advertising.

105. In *NZME/Fairfax*, the Commission noted that:¹¹⁹

Advertisers appear to adjust their advertising spend from one platform to another in response to consumer engagement and the extent to which the platform is performing well, in terms of changing consumer behaviour through increased sales or customer interaction. This may indicate that advertisers view the different platforms as part of a wider advertising market.

106. However, the Commission went on to find that print and online advertising were separate markets, noting that:¹²⁰

... advertisers' different methods of engaging with the consumer, advertisers' views of the relative strengths of the different platforms and the extent to which many different forms of advertising media are selected as part of a wider advertising strategy, indicate that individual platforms are not substitutable and therefore constitute separate product markets.

¹¹⁷ APW/GMG/EMAP European Commission Case No. COMP/M.5051, at [26]-[27].

¹¹⁸ EC *Google/DoubleClick* above n101 at [45].

¹¹⁹ *NZME/Fairfax* [2017] NZCC 8, at [239].

¹²⁰ *Ibid*, at [240].

107. This was consistent with the Commission’s previous decisions where we viewed different forms of media as complements to print advertising rather than substitutes.¹²¹
108. Furthermore, the views of industry parties interviewed by the Commission in this case suggest that print and online advertising perform different roles and are not close substitutes.
109. While the weight of evidence indicated that print advertising should be excluded from the market, there was some evidence that it nonetheless imposes some degree of constraint on online advertising. For example, Trade Me’s [] for 2017 identified [], noting that “[]”.¹²² When comparing its motor vehicle classifieds revenue in a strategy document, Trade Me [].¹²³ Trade Me also identified [] in that same document, although the reference to [] appears to mainly be in relation to [].
110. As such, we consider that print advertising is unlikely to be in the same market as online advertising. However, we have considered any constraint that print advertising exerts in our competition analysis.

Our assessment of substitutability between classified and other types of advertising

111. The distinction between classified advertisements and other types of advertisements has also been considered in a number of decisions by competition authorities.
- 111.1 The ACCC defined separate markets for online display advertising and online classifieds advertising in its Public Competition Assessment opposing Carsales’ proposed acquisition of Trading Post, although the ACCC did not provide reasons.¹²⁴
- 111.2 The EC briefly considered the issue in its assessment of the proposed acquisition of joint control by APW and GMG over the company Emap, but did not conclude as it was unnecessary to the assessment in that case.¹²⁵
- 111.3 In *Google/DoubleClick*, the EC considered that display and search advertisements may be substitutable to a certain extent, but did not conclude on whether display and search advertisements constituted the same or separate markets. In any event, the EC did not consider the question of

¹²¹ Ibid, at [242].

¹²² [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

¹²³ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹²⁴ ACCC *Carsales* above n99 at [66]-[68].

¹²⁵ EC *APW/GMG/EMAP* above n117 at [28].

whether either or both of those types of advertisements are substitutes for classified advertising.¹²⁶

112. Trade Me’s internal documents generally indicated that it views []].¹²⁷
 []].¹²⁷
 A Trade Me Motors strategy document which identifies key competitors also [], discussing, for example, [].¹²⁸ Another strategy document refers to the “[]”.¹²⁹
113. Furthermore, the views of interviewees suggest that classifieds and other types of advertising perform different roles and are not close substitutes.
114. There is some reference to Google (the main supplier of search advertising) in Trade Me’s internal documents, suggesting that it may impose some constraint.¹³⁰ However, [].
115. As such, we consider that display and search advertising are unlikely to be in the same market as online classifieds advertising. However, we have considered any constraint that suppliers of display and search advertising (including Facebook and Google) exert on online classified advertising in our competition analysis.

Conclusion

116. Based on the evidence before us, we consider that the product dimension of the relevant advertising market is limited to online motor vehicle classified advertising. We do not consider that other platforms and types of advertising are sufficiently close substitutes to be included in the same market as online motor vehicle classified advertising.

¹²⁶ EC *Google/DoubleClick* above n101 at [53].

¹²⁷ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

¹²⁸ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

¹²⁹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹³⁰ See for example [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017), which notes Trade Me’s concern that []; and Trade Me’s note that [] in “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 16.

Customer dimension

117. Trade Me submitted that the relevant market should be confined to the supply of motor vehicle advertising to dealers.¹³¹ This approach distinguishes between dealers and private individuals selling cars.
118. This distinction is consistent with the ACCC's Public Competition Assessment opposing the proposed acquisition of Trading Post by Carsales, in which the ACCC found:¹³²
- dealer and private advertisers have different needs, and meeting these needs requires differing levels of investment and sophistication for website operators. For instance, in order to successfully attract dealer advertisers a website operator must offer support tools (e.g. car inventory and lead management software applications) to allow dealers to load and manage their inventory for multiple cars. It is also an advantage to have a large sales force and other services... In contrast, private advertisers tend to sell only one car at a time (every few years) and do not require support tools to manage the sale of one car;
 - dealer vehicles tend, on average, to be higher value and dealers have a preference for advertising on sites where buyers are more likely to be seeking cars in the relevant price range; and
 - in order to meet these needs and to maximise their own profits, providers of online automotive advertising sites clearly distinguish between dealer and private advertiser groups, including by offering each of them different price structures and services that are not made available to the other group.
119. The evidence shows that Trade Me makes a clear distinction between dealers and private individuals, with different pricing structures and packages for these respective groups. There is also evidence that the conditions of competition in relation to private sellers differ from those relating to dealers. For instance, there is evidence that Trade Me has reduced prices to some private sellers in response to [].¹³³ [].¹³⁴
120. Accordingly, we consider that the supply of online motor vehicle classified advertising to dealers (including both independent and franchise dealers) is a separate market to the supply of such advertising to private sellers.

¹³¹ Application at [9.4].

¹³² ACCC *Carsales* above n99 at [60].

¹³³ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

¹³⁴ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

Geographic dimension

121. Trade Me submitted that the relevant geographic dimension of the market is national.¹³⁵ Given that suppliers of online motor vehicle classifieds advertising operate nationally, we agree that the market is national.

Conclusion

122. We consider that the relevant advertising market is the national market for the supply of online motor vehicle classified advertising to dealers.

DMS market

123. Trade Me submitted that the relevant DMS market is the national market for the supply of DMS products, and that there is no justification for defining separate customer markets for DMS products targeted at independent dealers and those targeted at franchise dealers.¹³⁶
124. For the reasons set out below, we consider that the relevant DMS market is the national market for the supply of DMS products to independent dealers.

*Demand-side substitution*Parties' views

125. Trade Me submitted that there is no sufficient distinction between DMS products offered to franchise and independent dealers to justify defining separate markets, particularly noting specific DMS products which market themselves to all dealers (or at least do not distinguish between franchise and independent dealers in their marketing).¹³⁷ Trade Me also noted that [redacted].¹³⁸ However, Trade Me had earlier recognised some distinction between the DMS needs of franchise and independent dealers.¹³⁹
126. Motorcentral submitted that [redacted].¹⁴⁰ However, earlier in the investigation, Motorcentral told the Commission [redacted].¹⁴¹ Motorcentral also indicated that [redacted].¹⁴² In particular, Motorcentral noted that

¹³⁵ Application at [9.4].

¹³⁶ Application at [9.4]; Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [35]-[38]; and Trade Me's Response to Letter of Unresolved Issues (31 January 2018), at [162]-[164].

¹³⁷ Trade Me's Response to Letter of Issues, 14 September 2017, at [39] and Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [38].

¹³⁸ [redacted].

¹³⁹ Application at [9.47(c)(ii)].

¹⁴⁰ Letter from Motorcentral to the Commerce Commission, 31 January 2018, at [10]. See also Commerce Commission interview with Motorcentral (15 February 2018).

¹⁴¹ Commerce Commission interview with Motorcentral (4 October 2017).

¹⁴² Commerce Commission interview with Motorcentral (4 October 2017).

[].¹⁴³

Others' views

127. We asked other DMS providers about their views of the customer dimension of the market.

127.1 [] considered that it did not directly compete with Motorcentral given Motorcentral's focus on independent dealers, and Motorcentral's absence of workshop and accounting functionality.¹⁴⁴

127.2 Similar comments were made by [], which also noted that, unlike franchise DMS providers, independent DMS providers prioritise providing low-cost products.¹⁴⁵

127.3 [], told the Commission that it does not target independent dealers due to financial risks associated with those dealers (eg, credit risk). [] noted that independent and franchise dealers are like "chalk and cheese" in terms of their respective needs.¹⁴⁶ [] was not aware of Motorcentral as a DMS competitor.

127.4 [], commented that franchise dealers need very sophisticated software. Both [] and [] contrasted this type of software with the "lite" DMSs provided by the likes of Motorcentral.¹⁴⁷ [] further noted that franchise DMSs require higher-paying customers so as to recoup their large ongoing development costs.¹⁴⁸

127.5 [], [] and [], DMS suppliers to independent dealers, all indicated that their products were solely targeted at independent dealers, with franchise dealers needing larger and more expensive software with more features.¹⁴⁹

Our assessment

128. The evidence we gathered showed that independent and franchise dealers have different needs in terms of what they require from a DMS product. Independent

¹⁴³ Commerce Commission interview with Motorcentral (4 October 2017).

¹⁴⁴ Commerce Commission interview with [].

¹⁴⁵ Commerce Commission interview with [].

¹⁴⁶ Commerce Commission interview with [].

¹⁴⁷ Commerce Commission interviews with [] and [].

¹⁴⁸ Commerce Commission interview with [].

¹⁴⁹ Commerce Commission interviews with []; [] and [].

dealers typically require only a ‘lite’ DMS – without inbuilt accounting, workshop, or parts modules – whereas franchise dealers typically require this functionality. This has resulted in a distinction between those DMS products that are targeted towards independent dealers and those targeted towards franchise dealers.

129. This distinction is supported by Trade Me’s and Motorcentral’s internal documents. For example, in one document discussing the acquisition, senior Trade Me management noted the following:¹⁵⁰

[

]

130. In an internal email between Trade Me senior management in which [] is discussed, it is noted that Autoplay “[

]”.¹⁵¹

131. We note that Motorcentral []. In its [], it stated that “[]”.¹⁵² In that same document, Motorcentral measured its market share by the number of independent dealers to which it supplies its DMS product (that is, excluding franchise dealers).¹⁵³

132. Moreover, the Sale and Purchase Agreement for the acquisition appears to recognise that []:¹⁵⁴

[

]

133. Accordingly, from a demand-side perspective, we consider that DMSs targeting franchise dealers are not a close substitute for DMSs targeting independent dealers.

¹⁵⁰ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹⁵¹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹⁵² [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

¹⁵³ For clarity, Motorcentral’s references to “used” dealers are to independent dealers – that is, dealers who sell only used cars and do not have a franchise agreement with a manufacturer. This distinction is detailed further above.

¹⁵⁴ Sale and Purchase Agreement, attached as confidential Appendix Five to the Application, at [].

Supply-side substitution

Parties' views

134. Trade Me submitted that DMS providers who currently focus on franchise dealers could easily change their offerings to serve independent dealers, particularly by removing functionality to create pared-back versions of their software.¹⁵⁵ Accordingly, on the basis of supply-side substitution, Trade Me submitted that the relevant market should include DMSs targeting independent and franchise dealers.
135. Motorcentral told the Commission that its position was that [].¹⁵⁶ Motorcentral also told us that although [].

Others' views

136. The franchise DMS providers that we have spoken with indicated that:
- 136.1 the margins in the market for DMSs provided to independent dealers are small (relative to the margins for franchise dealer customers), such that the significant investment required to create such a product, or tailor an existing franchise product to independent dealers would be unlikely to be recouped.¹⁵⁷ One franchise DMS provider said that entry into the independent dealer DMS market would be “difficult and uncertain”, and it therefore had no appetite to do so;¹⁵⁸
- 136.2 there would be significant ongoing costs involved in providing user support and training to independent dealers which would not be able to be recouped, due to these customers' low price point.¹⁵⁹
137. For example, [] told the Commission that prices would need to increase to around \$[] a month (Motorcentral currently charges around \$120 to \$140 a month) for it to consider targeting independent dealers.¹⁶⁰

¹⁵⁵ Trade Me's Response to Letter of Issues, 14 September 2017, at [39]; Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [35]-[40] and Commerce Commission interview with Trade Me (24 November 2017).

¹⁵⁶ Commerce Commission interview with Motorcentral (15 February 2018).

¹⁵⁷ Commerce Commission interviews with []; []; and [].

¹⁵⁸ Commerce Commission interview with [].

¹⁵⁹ For example, [] told us that to do so “would involve a lot of work for no real gain”: Commerce Commission interview with []. [] told us that independent dealers require the same level of training/investment as franchise dealers, but are smaller and seek lower prices: Commerce Commission interview with [].

¹⁶⁰ Commerce Commission interview with [].

Our assessment

138. The evidence indicates that providers of DMSs to franchise dealers would need to make additional investments and would not find it sufficiently profitable to switch production so as to be considered in the same market as providers of DMSs to independent dealers. Accordingly, we consider that there is a customer dimension to the relevant DMS market, such that the supply of DMS products to independent dealers forms a separate market from the supply of DMS products to franchise dealers. However, when considering entry and expansion into the DMS market, we have considered whether franchise DMS providers would be likely to enter to constrain a Trade Me-owned Motorcentral.

Conclusion

139. In our view the relevant market is the supply of DMS products to independent dealers.
140. We consider that the relevant market is national in scope, given that suppliers of DMS products operate nationally.

Conclusion

141. Accordingly, we consider that the relevant markets are:
- 141.1 the national market for the supply of online motor vehicle classified advertising to dealers (the advertising market); and
- 141.2 the national market for the supply of DMS products to independent dealers (the DMS market).

Current state of competition

142. As a starting point in our assessment of the competitive effects of the acquisition, we assessed the current competitive environment in both the advertising market and the DMS market. This is because the extent of any market power that Trade Me and Motorcentral hold is relevant for our analyses of both the horizontal and vertical competitive effects arising from the acquisition. We also discuss the role that DMSs play in competition between listings platforms, which is particularly relevant to our vertical effects analysis.

Advertising market

Parties' views

143. Many of Trade Me's submissions on the nature of competition in the advertising market were in the context of a broader market including print advertising as well as other types of online advertising.
144. In its application, Trade Me listed a range of competitors with "significant awareness among advertisers and significant audiences that they could leverage to grow even

further”, including its current online classified advertising competitors Driven and Autotrader.¹⁶¹

145. However, Trade Me later noted that “it is far from the case that Trade Me considers [],” and Trade Me [].¹⁶²
146. Trade Me stressed the importance of Google and Facebook as both actual and potential competitive constraints, for instance submitting that “Facebook is already [].¹⁶³ Trade Me particularly identified the threat of [] as a constraint.¹⁶⁴

Others’ views

147. We asked dealers about how they view Trade Me. Of the 27 dealers we questioned about Trade Me’s importance to their business, 24 described Trade Me as being (at least) “very important” (or similar); and 18 used stronger wording such as “necessity”, “can’t afford not to”, and “indispensable” to describe their relationships with Trade Me. Many dealers indicated that they also list vehicles on Autotrader, with some stating this was because it is cheap, easy to access via their DMS, and still produces some sales leads.¹⁶⁵
148. Bauer, owner of Autotrader, submitted that within the relevant advertising market, “[]”.¹⁶⁶ Bauer provided data [] showing that []. Bauer also submitted that other online classified advertising platforms are “[]”, and that Driven had “[]”.
149. Other online classified advertising platforms also commented that Trade Me was the largest competitor in the market by a substantial margin.¹⁶⁷ For example, [] submitted that the advertising market was “dominated” by Trade Me and that it was

¹⁶¹ Application at [9.11], [9.47].

¹⁶² Trade Me’s Response to Letter of Issues, 14 September 2017, at [158].

¹⁶³ Trade Me’s Response to Supplementary Letter of Issues, 21 November 2017, at [66(b)]. See also Application at [9.12].

¹⁶⁴ Trade Me’s Response to Letter of Issues, 14 September 2017, at [165].

¹⁶⁵ See for example Commerce Commission interviews with [] and [].

¹⁶⁶ Submission from Bauer (14 August 2017), at [4.1]–[4.11].

¹⁶⁷ Aside from the specific citations following, see also Commerce Commission interview with [].

a “necessary evil” for dealers;¹⁶⁸ and [] submitted that “[w]hether dealers like it or not, they must be on Trade Me”.¹⁶⁹

150. Overseas perceptions of the New Zealand market were similar. [] noted that Trade Me is a “very strong player” and that since New Zealand is a mature market with a strong incumbent, it was reticent to enter the New Zealand market.¹⁷⁰ Similarly, [] told the Commission that Trade Me has “market dominance” in New Zealand¹⁷¹ and DMS provider [] saw Trade Me as the “market leader” in New Zealand.¹⁷²
151. Facebook told the Commission that its view was that “[]”, although this view was not specific to New Zealand.¹⁷³

Our assessment

Existing competition

152. We consider that Trade Me has market power in the advertising market. We estimate that its market share is approximately []%,¹⁷⁴ with Autotrader [].
153. Trade Me’s FY15 Motors Strategy refers to itself as having “[]”.¹⁷⁵ A Motorcentral internal document described Trade Me as “[]”.¹⁷⁶
154. There is evidence that Trade Me has pricing power in the advertising market, as Trade Me has increased prices to dealers by []% (and more for some services) consistently, year by year,

¹⁶⁸ Commerce Commission interview with [].

¹⁶⁹ [].

¹⁷⁰ Commerce Commission interview with [].

¹⁷¹ Commerce Commission interview with [].

¹⁷² Commerce Commission interview with [].

¹⁷³ Email from Facebook to Commerce Commission (11 October 2017). We note that Facebook’s view of advertising markets globally differs from the views that have been taken by some overseas competition regulators. For example, in 2018, France’s Autorité de la Concurrence characterised the online display advertising market as a “complex” one “characterised by a fragile competitive equilibrium ... with Google and Facebook leading the pack.” The French authority characterised both Google and Facebook as having a degree of market power in this market: Autorité de la Concurrence “Sector-specific investigation into online advertising (6 March 2018) http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=684&id_article=3133.

¹⁷⁴ This figure is based on the Commission’s calculations from

[].

¹⁷⁵ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹⁷⁶ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

- [].¹⁷⁷ This pricing power contrasts with the private seller market, where Trade Me faces increased competition from Facebook, particularly for the sale of cheaper cars.
155. As discussed in the market definition section above, the competitive strength of a listings platform generally depends on its ability to attract both vehicle listings and audience. Trade Me has substantially more listings and audience than its rivals, which generates strong cross-platform network effects. Trade Me's FY18 Strategy noted that [].¹⁷⁸
156. Trade Me's FY17 Strategy similarly notes that [].¹⁷⁹ In that document, Trade Me described itself as having a "[]" in terms of listings.¹⁸⁰ As discussed above, on 1 January 2018, Trade Me had approximately [] listings.¹⁸¹ Autotrader had approximately [] listings in January 2018¹⁸² and Driven had approximately [] in August 2017.¹⁸³
157. Trade Me's website notes that Trade Me is the "first choice for over 80% of [motor vehicle] buyers",¹⁸⁴ which is reflected in an internal document provided to us by Trade Me.¹⁸⁵ Similarly, that internal document details a market study undertaken on Trade Me's behalf, which stated that []% of respondents considered Trade Me when looking to buy a vehicle (this figure increases to []% of respondents aged between 24-44 years). That study also notes that []% of respondents were of the opinion that "the most useful resource when looking for vehicles is Trade Me Motors".¹⁸⁶

¹⁷⁷ See [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017). Price increases differ across the Basic, Torque and Turbo packages, across Features and Superfeatures, and according to a dealer's purchase volumes in each case. In any event, weighted annual average price increases are usually []%.

¹⁷⁸ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹⁷⁹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹⁸⁰ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹⁸¹ As mentioned above, these January 2018 figures are []: Trade Me response to Commerce Commission information request dated 30 August 2017 (14 September 2017); [] provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

¹⁸² Email from Bell Gully to the Commerce Commission (30 January 2018).

¹⁸³ Commerce Commission interview with NZME (4 August 2017).

¹⁸⁴ Trade Me Motors www.trademe.co.nz/motors (accessed 28 February 2018).

¹⁸⁵ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

¹⁸⁶ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

158. Another Trade Me document noted that, based on a brand monitoring study from March-June 2017, approximately []% of the public have used Trade Me to buy or sell a vehicle, while Autotrader has been used by []% and Driven by []%.¹⁸⁷
159. Trade Me described Autotrader in its FY15 Strategy as [].¹⁸⁸ In its FY14 Strategy, it described Autotrader as [] and noted that Autotrader had “[]”.
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160. However, the competitive constraint that Autotrader imposes on Trade Me appears to be limited. Trade Me’s page impressions are at least [] times larger than those of Autotrader’s; Trade Me’s FY17 Strategy stated that it has “[]” over Autotrader; Trade Me has almost [] times as many listings (including both dealer and private listings); Autotrader charges dealers much less than Trade Me; and Autotrader has [].¹⁹⁰
161. Trade Me described Driven as [] in its FY17 Strategy. However, Driven also appears to provide a limited constraint on Trade Me. It is currently free for dealers, and [].¹⁹¹ Trade Me’s FY17 Strategy estimated that it has [] times the active vehicle hunting audience that Driven does.¹⁹²
162. While existing competitors have a relatively small audience, the number of listings on Autotrader and Driven, and feedback from dealers, indicates that many dealers currently multi-home. This may be because of those platforms’ pricing structures – Driven is free while Autotrader charges per lead, rather than per listing.
163. On the basis of the evidence above, and the feedback we received during the investigation, we consider that Trade Me faces limited existing competition.
164. We also note that Motorcentral’s Need-a-Car listings platform is a recent entrant into the advertising market. We consider the constraint that Need-a-Car currently

¹⁸⁷ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017), at 17-19.

¹⁸⁸ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹⁸⁹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹⁹⁰ Commerce Commission internal analysis of data provided to the Commission by Trade Me, Autotrader and Driven; and [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

¹⁹¹ Commerce Commission interview with NZME (11 October 2017).

¹⁹² [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

imposes on Trade Me, and its likely future constraint, later in these reasons when we analyse the horizontal effects of the acquisition in the advertising market.

Potential competition

165. We now turn to consider the conditions of entry and expansion in the advertising market and the extent to which Trade Me faces potential competition.
166. There have been several unsuccessful attempts to launch competing online classified advertising platforms, despite media attention and financial backing from large, well-known organisations. The entrants include:
 - 166.1 Wheedle, financially backed by the founder of Mainfreight, exited the market less than two years after it was set up in 2012;
 - 166.2 Sella, owned by APN (at the time the owner of the New Zealand Herald) and which had acquired Trade & Exchange NZ (a previously-prominent print, and then online-only, classified publication), closed in 2013 despite having 550,000 users; and
 - 166.3 Gumtree (owned by eBay and one of the largest general online classified advertising platforms in Australia and the UK) closed its New Zealand operations in 2015 after failing to gain traction against Trade Me.
167. These failures illustrate the challenges that new entrants face. Cross-platform network effects in the advertising market create barriers to entry and expansion, with difficulties in attracting a substantial audience appearing to be a particular challenge. Trade Me's scale on both sides of its platform generates strong cross-platform network effects, which has made it difficult for existing competitors to challenge for market share.
168. There are also sunk costs associated with marketing to attract audience, which makes entry and expansion more risky.
169. While existing conditions in the advertising market are likely to make entry and expansion difficult, there is evidence that Trade Me sees a significant threat of entry from global players. Trade Me has, so far, weathered competitive challenges from several local players, successfully retaining its large market share and protecting its scale in audience and listings.
170. However, entry into the New Zealand market by a global player, especially one with an established audience base in New Zealand, could potentially unseat Trade Me from its current strong position in the advertising market and result in a loss of market share and pricing power.

171. Trade Me submitted that the “the threat of new entry, expansion, and disruption is ever present” in the advertising market.¹⁹³ This threat is reflected in its 2017 Annual Report:¹⁹⁴

We have huge opportunity in front of us, but we also have bigger, stronger and more active competitors than we’ve had at any time in Trade Me’s history - including three global competitors making their presence felt in our local markets: Facebook, Amazon and Alibaba... So, how can we compete and grow in the face of global behemoths at one end of the competitive spectrum, and all manner of start-ups and potential disrupters at the other?

172. Trade Me told us that “Facebook is already []”.¹⁹⁵ Facebook is likely to be a particularly significant threat to Trade Me given that it already has a significant audience in New Zealand which could potentially be converted into an active vehicle buying audience.¹⁹⁶
173. As such, while Trade Me has market power in the advertising market, that market power has some vulnerability given the threat that new entry poses. Later, in our analysis of the vertical effects of the acquisition in the advertising market, we further consider the likelihood of significant new entry into the advertising market.

Conclusion on the state of competition in the advertising market

174. We consider that Trade Me faces limited existing competition in the advertising market and has market power. Its large audience in particular makes it a “must have” for dealers. Dealers appear to use other listings platforms as a secondary advertising location because the pricing structures of those platforms means that they pay only for leads or do not pay at all. Existing rival listings platforms have had difficulty in challenging Trade Me for audience and hence in attracting greater numbers of dealer listings.
175. Although successful entry into the advertising market is difficult because of the large obstacles to entry and expansion, []. Trade Me’s market power in the advertising market has some vulnerability given this threat of new entry, particularly from parties with a significant existing New Zealand audience base. As we discuss later in our analysis of the vertical effects of the acquisition, Trade Me would be likely to perceive significant value in delaying or preventing this entry and would like have the ability to do so.

¹⁹³ Trade Me’s Response to Letter of Unresolved Issues, 31 January 2018, at [156]. As discussed earlier in these reasons, Trade Me considered the advertising market to also include other platforms (such as print) and types of advertising (such as display and search).

¹⁹⁴ Trade Me Group Limited 2017 Annual Report (24 August 2017) <https://investors.trademe.co.nz/media/154801/TME-Annual-Report-F17.pdf>, at 21.

¹⁹⁵ Trade Me’s Response to Supplementary Letter of Issues, 21 November 2017, at [66(b)]. See also Application at [9.12].

¹⁹⁶ Andy Fyers and Henry Cooke “Facebook is New Zealand’s second-favourite leisure activity” (23 March 2017) <https://www.stuff.co.nz/technology/90005751/facebook-is-new-zealands-second-favourite-leisure-activity>.

DMS market

Parties' views

176. Motorcentral initially told the Commission that []¹⁹⁷ Motorcentral noted that it had once expected [] to pose more of a competitive constraint, but that [].
177. Motorcentral's []¹⁹⁸ Motorcentral explained to us that its reason for [] was that:¹⁹⁹
[]
[].
178. Motorcentral's views changed during the course of our investigation. It later submitted that, although it had [], this was not based on any in-depth analysis. Motorcentral said that if it were to conduct the analysis again, given the experience it has accrued over the course of the Commission's investigation, it would instead [].²⁰⁰
179. In relation to potential competition, Trade Me submitted that there are no barriers to entry and expansion in the DMS market, citing Motorcentral's successful entry and expansion as evidence of this. Motorcentral entered in 2011 and, in its first 18 months, achieved a customer base of 100 dealers.²⁰¹
180. Trade Me submitted that Motorcentral's entry and expansion were not due to "Goldilocks" conditions when barriers to entry were uniquely low; but were due to Motorcentral taking advantage of a market opportunity, and that an equally dynamic new entrant could displace Motorcentral.²⁰² Trade Me and Motorcentral both

¹⁹⁷ Commerce Commission interview with Motorcentral (4 October 2017).

¹⁹⁸ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

¹⁹⁹ Commerce Commission interview with Motorcentral (4 October 2017).

²⁰⁰ Letter from Motorcentral to the Commerce Commission, 31 January 2018.

²⁰¹ Trade Me's Response to Letter of Issues, 14 September 2017, at [45]; see also Richard Edwards "New sourcing site launches" (10 October 2012) Autotalk <http://autotalk.co.nz/news/new-sourcing-site-launches>.

²⁰² Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [51]–[56].

submitted that advances in technology, particularly cloud storage technology, have made entry into the DMS market easier since Motorcentral entered in 2011.²⁰³

181. Trade Me also identified other examples of entry such as Virtual Yard and [].²⁰⁴ Trade Me considered this reflected the low cost of other existing DMS providers in New Zealand or Australia modifying their products to target independent dealers.

182. Both Trade Me and Motorcentral emphasised to the Commission the ease with which dealers could switch DMS, with Motorcentral noting that [].²⁰⁵

Others' views

183. We asked other DMS providers about the extent to which rivals impose a competitive constraint on Motorcentral.

183.1 [] told the Commission that Motorcentral does not face any serious competition in the independent dealer space. It said that [] and [] used to be active but have either “[]” or “[]”.²⁰⁶ [] noted that [] in particular had failed to keep pace with technology, as it had not [].

183.2 [] told the Commission that, although it was once a strong competitor in the DMS market, it had []²⁰⁷ This was consistent with switching data we received from Motorcentral, which indicated [].²⁰⁸

183.3 [] told the Commission that [],²⁰⁹ which suggests that [].

²⁰³ Trade Me's Response to Letter of Issues, 14 September 2017, at [48]; Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [57]; Commerce Commission interview with Motorcentral (15 February 2018).

²⁰⁴ Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [45], [164].

²⁰⁵ Letter from Motorcentral to the Commerce Commission, 31 January 2018, at [6]. See also Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [58].

²⁰⁶ Commerce Commission interview with [].

²⁰⁷ Commerce Commission interview with [].

²⁰⁸ [], provided by email by Motorcentral to the Commerce Commission (29 January 2018); and Motorcentral response to Commerce Commission information request dated 11 January 2018 (29 January 2018).

²⁰⁹ Commerce Commission interview with [].

184. [] submitted that it did not “believe any incumbent or new entrant could readily challenge Motorcentral's grip on its huge SME dealer base”, noting that “Motorcentral manages dealer inventories through a range of products which, in reality, make its customers very sticky once they’re on-board”.²¹⁰ [] said that although Autoplay could be a meaningful DMS rival to Motorcentral, it does not place any material constraint on Motorcentral because Motorcentral and Autoplay target different markets and do not currently compete.

185. In relation to potential competition, [] submitted that Motorcentral was able to achieve its growth due to certain conditions that no longer exist. It submitted:²¹¹

[]

186. [] emphasised the difficulty that existing DMS providers face in expanding, noting that the small revenues available (particularly given Motorcentral’s strong market position) have limited its ability to engage in development and expansion.²¹²

187. Most of the dealers the Commission spoke with indicated that switching DMSs would be a complex, difficult, and/or costly process. There was some variability in the feedback, however, with some dealers indicating that switching would be relatively costless. Of the small number of dealers who indicated that they were aware of alternative DMS products, few dealers indicated any desire to switch.²¹³

Our assessment

Existing competition

188. Motorcentral’s internal documents estimate the following market shares in the DMS market:²¹⁴

Table 2: Motorcentral estimated DMS market shares

DMS	Market share (by number of dealers served)	
	March 2016	March 2017
Motorcentral	[]	[]
TopGear	[]	[]

²¹⁰ []

²¹¹ []

²¹² Commerce Commission interview with []

²¹³ See for example Commerce Commission interviews with []; []; []; []; []; []; []

²¹⁴ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017). We note that Motorcentral only measures its market share against other DMS providers to independent dealers.

Grant Day	[]	[]
Orion	[]	[]
Local systems ²¹⁵	[]	[]
[]	[]	[]

189. These figures may underestimate Motorcentral’s market share, as Motorcentral provided us with data showing that it continued to gain dealers from March 2017 until January 2018.²¹⁶
190. The market share estimates show that TopGear, Grant Day and Orion comprised []% of the market in March 2017, with “local systems” and “[]” accounting for []%. Motorcentral’s large and increasing market share suggests that its rivals currently impose only a limited constraint on it.
191. Trade Me submitted that Motorcentral does not consider the internal market share estimates above to be accurate, as they were based on “[]”.²¹⁷ Motorcentral subsequently submitted a revised market share estimate in January 2018 in which its share was approximately []%, with TopGear, Grant Day and Orion comprising approximately []% of the market.²¹⁸
192. Other evidence submitted by the parties also indicates that Motorcentral faces limited existing competition:
- 192.1 A Motorcentral document stated that “[]”²¹⁹ Another internal Motorcentral document noted that “[]”.²²⁰
- 192.2 Trade Me’s Motorcentral Acquisition Board document noted that other DMSs are “[]”, and “[]”.²²¹ An internal Trade Me email described Motorcentral as “[]”.²²²

²¹⁵ “Local systems” is not defined.

²¹⁶ [], provided by email by Motorcentral to the Commerce Commission (29 January 2018).

²¹⁷ Trade Me Response to Supplementary Letter of Issues, 21 November 2017, at [41].

²¹⁸ Motorcentral response to Commerce Commission information request dated 11 January 2018 (29 January 2018), at 5.

²¹⁹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²²⁰ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017) at 11-12.

²²¹ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 19.

²²² [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

192.3 Motorcentral increased its prices in June 2017 by 20% for a standard DMS plan (from \$100 to \$120) and by 40% per month for the first dealership on a multi dealership plan (from \$100 to \$140).²²³ This ability to raise prices significantly could be an indicator that Motorcentral faces limited existing competition, particularly given that [redacted].²²⁴ We also note that Trade Me considered [redacted], which could be an explanation for the price increase.²²⁵

192.4 Unlike other DMS providers to independent dealers, Motorcentral [redacted].²²⁶ This may be an indicator of Motorcentral's strong position in the DMS market and the large amount of listings data it holds.

193. On the basis of the evidence above, and the feedback we received during the investigation, we consider that Motorcentral currently faces limited existing competition.

Potential competition

194. We now turn to consider the conditions of entry and expansion in the DMS market and the extent to which Motorcentral faces potential competition.

195. We recognise that there are existing DMS providers who offer similar products to Motorcentral or could produce similar products. Existing DMS providers in New Zealand include TopGear, Grant Day, and Virtual Yard, as well as overseas providers such as Revolution and Pentana. It is likely that it would be technically possible for these producers to develop their products to compete more closely with Motorcentral.

196. However, there are existing obstacles to entry and expansion in the DMS market.

196.1 First, as noted by most dealers, there are likely to be costs involved in switching between DMS providers, such as transferring data (which may need to be done manually²²⁷) and staff retraining. Switching costs may be greater

²²³ [redacted], provided by email by Russell McVeagh to the Commerce Commission (31 January 2018).

²²⁴ Email from Motorcentral to the Commerce Commission (20 February 2018). See also Commerce Commission interview with Motorcentral (15 February 2018).

²²⁵ Trade Me Response to Letter of Unresolved Issues, 31 January 2018, at [51].

²²⁶ [redacted], provided by email by Motorcentral to the Commerce Commission (5 October 2017).

²²⁷ Motorcentral submitted that it would be straightforward for dealers to retrieve their data from Motorcentral should they switch away (or close/sell their dealership): Commerce Commission interview with Motorcentral (15 February 2018). On the other hand, [redacted] told the Commission that they had faced ongoing difficulty extracting their data after they had closed/sold their dealerships, including being required to purchase an ongoing subscription to Motorcentral in order to continue to access their data: Commerce Commission interviews with [redacted] and [redacted].

for Motorcentral dealers, as there was evidence that these dealers are particularly “sticky”. The concern that Motorcentral is developing a “sticky proposition” lay behind

[]²²⁸ Motorcentral noted in a document that, “[]”²²⁹ and later confirmed this in an interview with the Commission.²³⁰ Motorcentral did not agree that its product is sticky, submitting that the functions it offers can be purchased separately.²³¹ However, we note its comment in a document provided to us that “[]”²³²

196.2 Second, there are likely to be significant sunk development and marketing costs associated with entry and expansion, including customisation costs for those with market-adjacent products. A Motorcentral document stated that it has

“[]”²³³ For overseas entrants there are likely to be additional costs of customising the relevant product for the local market. A Trade Me internal document noted that the DMS market consists of “[]”²³⁴

196.3 Third, feedback we received from franchise DMS suppliers generally indicated that profitable entry would be difficult, even where prices increased by a moderate amount.²³⁵ Some of these suppliers indicated that there were greater opportunities for profit in other markets.

197. We acknowledge that Motorcentral’s growth indicates that conditions of entry and expansion were not insurmountable at the time of its entry in 2011. However, having

²²⁸

[]

²²⁹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²³⁰ Commerce Commission interview with Motorcentral (15 February 2018).

²³¹ Commerce Commission interview with Motorcentral (15 February 2018).

²³² [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²³³ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²³⁴ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²³⁵ See for example, Commerce Commission interviews with [] and [].

captured a large part of the market, it may now be more difficult for Motorcentral’s potential competitors to enter and expand. The evidence suggests that, having identified a gap in the market and expanded rapidly to fill that gap, Motorcentral has established a “sticky” customer base. Those customers have invested time and money integrating the Motorcentral system into their businesses. Inducing these customers to switch to a new DMS would require both innovation and sunk costs by rivals. As noted above, Motorcentral increased its prices in June 2017 []²³⁶

198. Accordingly, we consider that there are market conditions which are likely to make entry and expansion in the DMS market difficult. Given these conditions of entry and expansion, and Motorcentral’s large market share, we consider that Motorcentral is likely to have market power in the DMS market.
199. While there are obstacles to entry and expansion in the DMS market, Motorcentral told us that []²³⁷ During our investigation, Motorcentral highlighted the new entry into the New Zealand DMS market of Virtual Yard, an Australian-based product.²³⁸ We also note that Motorcentral initially told us that []²³⁹ As we discuss later, Trade Me is likely to have an incentive to overcome the market conditions that make entry and expansion in the DMS market more difficult, given that it views DMSs as [] and as a rich source of data that helps to populate the dealer side of the listings platform and complement its existing significant audience.
200. As such, while Motorcentral has market power in the DMS market, that market power has some vulnerability given the potential threat that new entry poses.

Conclusion on the state of competition in the DMS market

201. Accordingly, we consider that Motorcentral likely has market power. It currently faces limited existing competition and there are significant obstacles to entry and expansion in the DMS market.
202. Although successful entry or expansion in the DMS market is difficult, []. Motorcentral’s market power in the DMS market has some vulnerability given this threat. The most likely source of such a challenge appears to be either DealerBase or an overseas player. As we discuss later in our horizontal effects analysis, the acquisition would remove DealerBase as a challenger. In our discussion of the vertical effects of the acquisition, we find that Trade Me would be likely to perceive significant value in delaying or preventing other potential

²³⁶ [], provided by email by Motorcentral to the Commerce Commission (29 January 2018).

²³⁷ Commerce Commission interview with Motorcentral (4 October 2017).

²³⁸ Letter from Motorcentral to the Commerce Commission, 31 January 2018; and Commerce Commission interview with Motorcentral (15 February 2018).

²³⁹ Commerce Commission interview with Motorcentral (4 October 2017).

sources of entry into the DMS market and would likely have the ability to do so.

Role DMSs play in competition between listings platforms

203. A key feature of DMSs is their ability to upload vehicle listings data to listings platforms.²⁴⁰ In the Motorcentral DMS, uploads to listing platforms are via a bulk upload feature, which is pre-loaded with export locations such as Trade Me and Autotrader. Dealers can turn their ability to upload to each of these locations on and off, and either manually ‘push’ the listings at any time and/or automate the process (eg, automatically ‘pushing’ listings several times each day).²⁴¹
204. Feedback from dealers indicated that they value the ease and convenience of using the bulk upload function in their DMS to push their listings data to listings platforms, and have become accustomed to that method.²⁴² Similarly, Motorcentral told the Commission that dealers want to be able to push listings data to listings platforms “very quickly”.²⁴³ Most dealers do not enter listings into listings platforms manually (ie, by entering data on individual vehicles into the listings platform), citing the time, cost, and possible data-entry errors associated with the method.²⁴⁴ This is consistent with Motorcentral’s description of a key benefit of a DMS – that is, to “deal with... data efficiently, minimise data entry, minimise double handling of information”.²⁴⁵ Accordingly, a practice of dealers using DMSs to bulk upload listings data to listings platforms has developed.

²⁴⁰ Motorcentral noted this in interviews with the Commission (4 October 2017 and 15 February 2018), and this is supported by feedback received from other industry participants including dealers, DMSs, and listings platforms. The interaction between DMSs (or other listing tools) and listings platforms is generally via an application programming interface (API), which, in short, is a method of communication between two pieces of software. It may be easier to conceptualise this interaction as a “plug-in”, whereby the DMS sending the data needs to collate and package the data in a format that can be accepted by the listings platform; and in turn the listings platform needs to design a method to receive and unpack the data. Different DMSs have different mechanisms by which vehicles are uploaded onto platforms; and similarly each platform accepts listings in a slightly different manner. For example, Autotrader currently uses an intermediary aggregator system called DMi to repackage the feeds from different DMSs (generally CSV files) into the listings that appear on its website. As mentioned above, Trade Me does not accept listings onto Trade Me Motors directly from DMSs (except DealerBase), and such listings are first sent to DealerBase before being uploaded to Trade Me.

²⁴¹ Dealers can also customise uploads by choosing the listings platform(s) to which they wish to export each vehicle; and what data they wish to export to each platform (for example, whether or not to export photos).

²⁴² See for example Commerce Commission interviews with [redacted]; [redacted]; [redacted]; [redacted]; and [redacted]. See also email from [redacted] to the Commerce Commission (19 December 2017).

²⁴³ Commerce Commission interview with Motorcentral (4 October 2017).

²⁴⁴ Commerce Commission interviews with [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; and [redacted].

²⁴⁵ Commerce Commission interview with Motorcentral (4 October 2017).

205. By aggregating data relating to large numbers of listings, and enabling the bulk upload of that data, DMSs play an important role in competition between listings platforms. Listings platforms need dealer listings to attract an audience of potential buyers, which in turn makes the platform valuable to other dealers. The established way they receive that data is via DMSs. For instance, [] described listings data (particularly the data held in Motorcentral) as “an essential input;”²⁴⁶ and [] told the Commission that “for practical purposes” a DMS is essential for a dealer to be able to upload to listings platforms.²⁴⁷
206. Given that most listings are of used cars,²⁴⁸ DMSs serving independent dealers (which predominantly sell used cars) are likely to be particularly important in this role.
207. It follows that competition between listings platforms is materially affected by their ability to access large volumes of listings data, quickly and efficiently.

DMSs as entry facilitators

208. There are a number of instances in which DMSs have facilitated listings platforms’ entry into advertising markets in New Zealand and overseas.
209. As we discussed earlier, competitors in the advertising market need a critical mass of customers on both sides of the listings platform to compete effectively. DMSs are able to facilitate entry into the advertising market because they can provide potential new entrants with convenient access to large volumes of listings. Potential new entrants in the advertising market would still need to build mass on the audience side of the platform (through, for example, marketing their platform), although some entrants may already have an audience gained in another market (for example, Facebook). Those potential entrants with an existing audience base are likely to be well-positioned to overcome the cross-platform network effects which create a barrier to entry in the advertising market if they can quickly build scale on the dealer side of the listings platform by partnering with a DMS.
210. Driven is an example of a new entrant which may be more capable of building audience given the marketing channels made available through its owner, NZME (although, as we discussed above, to date it has not secured a large audience). Driven entered the advertising market in 2016 assisted by listings obtained via Motorcentral and Autoplay. NZME described the listings obtained via Motorcentral as [], because those listings tend to be [].²⁴⁹ Motorcentral explained to the Commission how it assisted Driven’s entry:²⁵⁰

²⁴⁶ []

²⁴⁷ Commerce Commission interview with [].

²⁴⁸ As discussed above, see [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017), at 7.

²⁴⁹ Commerce Commission interview with NZME (4 August 2017).

²⁵⁰ Commerce Commission interview with Motorcentral (4 October 2017).

[

]

211. NZME and Motorcentral currently

[

].²⁵¹

Motorcentral [] other platforms,²⁵² although it

[

].²⁵³ According to NZME, Driven obtains []% of its listings via Motorcentral (with most of the remainder from other DMSs).²⁵⁴ NZME told the Commission that

[

].²⁵⁵

212. Motorcentral was also able to assist its own listings platform – Need-a-Car – to enter the advertising market. It launched the platform in September 2017 with approximately 23,000 listings primarily sourced from the Motorcentral DMS.²⁵⁶ However, as we discuss further later in these reasons, it is likely to have difficulty in growing because it does not have an established audience base and will likely struggle to develop one.

213. Carsales, Australia’s largest listings platform, was established by the shareholders of Pentana (the largest DMS provider in Australia), and maintains a commercial relationship with Pentana to date.²⁵⁷ Carsales told the Commission that its relationship with Pentana

[

]. Carsales maintains a relationship with Pentana

under which

²⁵¹ [], provided by email by Motorcentral to the Commerce Commission (5 October 2017).

²⁵² [], provided by email by Motorcentral to the Commerce Commission (5 October 2017).

²⁵³ As mentioned above, Motorcentral [].

²⁵⁴ Commerce Commission interview with NZME (4 August 2017).

²⁵⁵ Commerce Commission interview with NZME (4 August 2017).

²⁵⁶ Tom Pullar-Strecker “Needacar website launches listing 23,000 vehicles for sale” (5 October 2017) Stuff www.stuff.co.nz/business/industries/97568189/needacar-website-launches-listing-23000-vehicles-for-sale.

²⁵⁷ Commerce Commission interview with Carsales.com.au (28 September 2017). See also *Carsales.com Limited Prospectus* (17 August 2009) available at <http://shareholder.carsales.com.au>, at 44–45.

[

]. Both Carsales and Pentana described these arrangements as [].²⁵⁸ Carsales also noted the importance of access to listings inventory to any potential new entrant listings platform.²⁵⁹

214. As mentioned above, in the United States Facebook has recently started to list vehicles from dealers on its Marketplace app. In Facebook’s announcement of this move, it said “we’re expanding our used car inventory by partnering with leaders in the auto industry”. These partners include DMSs and other listings platforms, which Facebook calls “inventory partners”.²⁶⁰ According to a report, Facebook was able to add “hundreds of thousands” of vehicle listings as a result these partnerships.²⁶¹ Facebook provides an example of a potential entrant that could, with access to a DMS, quickly establish itself in the market because it already has a large audience derived from other services it offers.
215. Motorcentral has recognised its ability to facilitate entry into the advertising market. In one of Motorcentral’s internal documents, where it discusses []²⁶² Motorcentral noted that its “[]”²⁶³ Motorcentral submitted that this document, authored by one of Limelight’s directors, reflected the author’s “speculative and preliminary thinking only”, and that it contained exaggeration.²⁶⁴ Nonetheless, we consider that the statements in the document carry weight, given the author’s position within Motorcentral and his knowledge of the relevant markets.

²⁵⁸ Commerce Commission interviews with Carsales.com.au (28 September 2017) and Pentana (26 October 2017).

²⁵⁹ Commerce Commission interview with Carsales.com.au (28 September 2017).

²⁶⁰ Facebook Help “List your dealership inventory on Marketplace” <https://www.facebook.com/business/help/562933087372962> (accessed 2 March 2018).

²⁶¹ Greg Sterling “Facebook third-party partnerships bring huge trove of used car listings to Marketplace” (27 October 2017) Search Engine Land www.searchengineland.com.

²⁶² [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

²⁶³ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

²⁶⁴ Motorcentral response to Commerce Commission information request dated 12 September 2017 (19 September 2017).

216. In another document, Motorcentral noted that “[]”.²⁶⁵
217. Motorcentral’s efforts to facilitate entry are consistent with evidence from a Motorcentral internal document which suggests that Motorcentral [] The document, which [], stated:²⁶⁶
- []
218. The Commission asked Motorcentral to clarify what it meant by becoming “[]”. Motorcentral explained that, []:²⁶⁷
- []
219. []. An email between Trade Me senior management [] stated “[]”.²⁶⁸ Similarly, Trade Me’s Motorcentral Acquisition Board document noted that “[]”.²⁶⁹ That document later recommended Trade Me “[]”.²⁷⁰
220. There is also some evidence that Trade Me has recognised the ability of DMSs to promote entry in the advertising market. A 2015 Trade Me internal document relating to [] discussed an alternative option of building its own []. One of the reasons stated against such an approach was: “[]

²⁶⁵ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²⁶⁶ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

²⁶⁷ Commerce Commission interview with Motorcentral (4 October 2017).

²⁶⁸ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²⁶⁹ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 9

²⁷⁰ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 16.

]”.²⁷¹*Importance of DMSs’ ability to interact with listings platforms*

221. A corollary of the importance of DMSs’ role in enhancing or limiting competition between listings platforms is that DMSs’ ability to interact with listings platforms is important for competition between DMSs. As we noted above, a key feature of DMSs is their ability to upload vehicle listings data to listings platforms, as dealers typically use their DMS to upload listings in bulk, given the efficiency of this method. As such, the quality of the listings data upload function (such as the extent to which those uploads are seamless) is likely to be a key aspect of the competitive offering of a DMS.
222. The ability to upload to Trade Me is likely to be especially important because dealers typically view Trade Me as a ‘must have’ platform on which to list their vehicles. Due to Trade Me’s significant position in the advertising market, DMS suppliers generally indicated to us that the ability to upload listings to Trade Me from their DMS is an important function. DMSs are therefore likely to benefit from more seamless and functional interaction with Trade Me.

Conclusion

223. The evidence indicates that DMSs play an important role in competition between online classified advertising platforms, as they are the main source of vehicle listings data for those platforms. Unrestricted access to that data is therefore likely to be important to platforms’ ability to compete in the advertising market.
224. Additionally, DMSs are able to facilitate new entry into the advertising market by providing access to large volumes of listings data. Where a potential entrant already has an existing audience base, partnering with a DMS can generate the critical mass on the dealer side of the listings platform necessary to effectively compete. Motorcentral in particular has assisted new entry by using its relationships with dealers to promote new entrants and by enabling seamless bulk uploads of listings data.
225. Access to Trade Me is also likely to be important to DMSs’ ability to compete; given that the listings data upload function is a key feature of DMSs, advertising on Trade Me is a “must have” for dealers and it has a large existing audience.

With and without scenarios

226. To assess whether an acquisition is likely to substantially lessen competition in a market, we compare the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of

²⁷¹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).²⁷²

Our approach to deciding what is likely without the acquisition

227. As noted by the High Court in *Woolworths*, the Commission is required to consider each of the counterfactuals that are real and substantial prospects. A relevant counterfactual involves more than a possibility but the effect does not need to be “more likely than not”.²⁷³
228. We do not choose a counterfactual that we consider has the greatest prospects of occurring (ie, is the ‘most likely’). Rather, a likely counterfactual is something that has a real chance of occurring.²⁷⁴
229. As a practical matter, we usually focus our analysis on the likely counterfactual we consider is the most competitive. If we are not satisfied that competition would not be likely to be substantially lessened when that counterfactual is compared to the factual, we must decline clearance.²⁷⁵
230. We make a pragmatic and commercial assessment of what is likely to occur in the future without the acquisition. This assessment is based on the information we obtain through our investigation and takes into account factors including market growth and technological changes.
231. Often the best guide of what would happen without an acquisition is what is currently happening (ie, the status quo). However, where a market is likely to undergo changes that will affect competition in the counterfactual, we take these changes into account.²⁷⁶

With the acquisition

232. With the acquisition, Trade Me would acquire control of Motorcentral. The acquisition would eliminate competition between DealerBase and Motorcentral in the DMS market, and between Trade Me and Need-a-Car in the advertising market, and result in a single vertically-integrated firm with unified incentives.
233. In a paper to the Trade Me Board, Trade Me staff proposed that:²⁷⁷

[

]

²⁷² *Mergers and Acquisitions Guidelines* above n4 at [2.29].

²⁷³ *Woolworths & Ors v Commerce Commission* (HC) above n10 at [111].

²⁷⁴ *Ibid.*

²⁷⁵ *Mergers and Acquisitions Guidelines* above n4 at [2.33].

²⁷⁶ *Ibid.*, at [2.36].

²⁷⁷ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 18.

234. While this suggests an intention to allow Motorcentral some independence, Trade Me would be the sole shareholder and would therefore exercise control over Motorcentral.

Without the acquisition

235. We considered how Trade Me and Motorcentral would be likely to behave if the acquisition did not go ahead, and therefore how competition would be likely to evolve without the acquisition. In particular, we considered whether Motorcentral would continue to expand in the advertising market and whether Trade Me would continue to invest in DealerBase to be more competitive in the DMS market.
236. For the reasons set out below, we consider that, without the acquisition:
- 236.1 Trade Me and Motorcentral would continue to be separate businesses seeking to independently maximise their own profits. To this end, we consider that Motorcentral would likely seek to expand its Need-a-Car platform. We also consider that Motorcentral would likely continue to facilitate entry into the advertising market where such opportunities arise (as it did with Driven and Need-a-Car);
- 236.2 Trade Me would be likely to continue to invest in DealerBase over the next two to three years so that it has a broader suite of features than it does presently. This would likely enable DealerBase to compete more effectively with Motorcentral and other independent DMS providers.

Would Motorcentral continue to seek to expand in the advertising market?

237. Trade Me and Motorcentral submitted that, absent the acquisition, Motorcentral would be likely to remain an independent company, and would continue to expand in the advertising market via its Need-a-Car listings platform.²⁷⁸
238. This was consistent with Motorcentral's public comments, reported in the media in September 2017:²⁷⁹

Limelight director Mena Eskander said Needacar would continue with or without the [acquisition] ... Eskander said Limelight would begin promoting Needacar through television and magazine advertising in a few weeks.

239. In our view Motorcentral would, absent the acquisition, continue to seek to expand in the advertising market via its Need-a-Car listings platform.

²⁷⁸ Application at [8.9]; Letter from Motorcentral to the Commerce Commission, 31 January 2018, at [24]–[29].

²⁷⁹ Tom Pullar-Strecker "Needacar website launches listing 23,000 vehicles for sale" (5 October 2017) Stuff www.stuff.co.nz/business/industries/97568189/needacar-website-launches-listing-23000-vehicles-for-sale.

Would Trade Me continue to invest in DealerBase?

240. We considered whether Trade Me would likely continue to invest in DealerBase to be more competitive in the DMS market. This issue is relevant to the assessment of horizontal effects in the DMS market. This is because, if it is likely that DealerBase would become a stronger competitor to Motorcentral, then the acquisition could result in a substantial lessening of competition due to the loss of that future competition.
241. We consider that the evidence shows that, absent the acquisition, Trade Me would likely continue to invest in DealerBase to be more competitive in the DMS market over the next two to three years.

Parties' views

242. Trade Me submitted that it would not develop DealerBase into a functional DMS competitor in the counterfactual.²⁸⁰ Trade Me said that[]. Trade Me submitted that [].
243. Trade Me said that this decision was made following [] and the realisation that[].²⁸¹ Trade Me also said that “[]”.²⁸²
244. Trade Me also submitted that [].²⁸³
245. Trade Me acknowledged that []; however, [] since those documents were written.²⁸⁴

²⁸⁰ Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [8]–[29]; and Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [28]–[40].

²⁸¹ Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [12]; and Commerce Commission interview with Trade Me (16 February 2018).

²⁸² Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [21(a)].

²⁸³ Application at [8.2].

²⁸⁴ Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [37].

246. Trade Me submitted that the relevant counterfactual is [].²⁸⁵ Trade Me submitted that [].²⁸⁶ Trade Me advised the Commission on 31 January 2018 that [].²⁸⁷

The evidence

247. During our investigation we obtained internal documents from Trade Me relevant to the issue of whether Trade Me would, absent the acquisition, continue to invest in DealerBase to be more competitive in the DMS market. We summarise the evidence from those internal documents below.
248. In 2012, Trade Me acquired full ownership of Autobase. Autobase was a company operating an online vehicle classified advertising website of the same name that carried listings from motor vehicle dealers. Autobase was also the owner of DealerBase, which it had developed in 2010.²⁸⁸ In a 2017 internal document, Trade Me’s senior management said that “[]”.²⁸⁹ [] told the Commission that DealerBase had “quite a take-up with dealers at that point” and that the acquisition gave Trade Me “a much greater population of used motor vehicle listings”.²⁹⁰
249. In 2014, Trade Me’s stated goal was for “[]”.²⁹¹ Earlier, in 2013, []”.²⁹² As part of this, Trade Me planned to “add functionality” to DealerBase, including “[]”.
250. In 2015, Trade Me’s strategy appears to have shifted from [] to []. This shift appears to have occurred in the context of some concern about []. A Board document in relation to

²⁸⁵ Commerce Commission interview with Trade Me (16 February 2018).

²⁸⁶ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 19.

²⁸⁷ Trade Me’s Response to Letter of Unresolved Issues, 31 January 2018, at [37]; Commerce Commission interview with Trade Me (16 February 2018); and Email from Russell McVeagh to the Commerce Commission (21 February 2018).

²⁸⁸ Autobase Dealer Services Website – DealerBase (10 July 2011)

<http://autobasenzeland.blogspot.co.nz/2011/07/dealer-services-website-dealerbase.html>.

²⁸⁹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²⁹⁰ Commerce Commission interview with [].

²⁹¹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²⁹² [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

[] included the following statements:²⁹³

250.1 “[]”;

250.2 “[]”;

250.3 Under the heading “[]” it stated “[]”.

251. The same Board document also suggests concern that [], noting that it was [].²⁹⁴

252. Trade Me [].²⁹⁵
There is evidence that [].
²⁹⁶ There was also further progress []; however, [].
[].²⁹⁷

253. Trade Me’s []. A Trade Me internal document from February 2016 recommended that [].²⁹⁸

²⁹³ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²⁹⁴

“[]”: [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017), emphasis added.

²⁹⁵ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²⁹⁶ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 16; and [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²⁹⁷ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

²⁹⁸ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

254. []:²⁹⁹
- []
255. The FY17 Strategy provided some detail []. Under “[]”, it noted “[]”. Relevant key performance indicators were “[]” and “[]”.³⁰⁰
256. That strategy also contemplated []:
- []
257. [] Trade Me held a collaborative planning session. []³⁰¹ Prior to the session, Trade Me appears to have interviewed a number of independent dealers to understand what those dealers expect from a DMS.³⁰²
258. The record of the planning session references []. The Head of Trade Me Motors’ notes from that session included the statement “[]”. The notes also discuss what dealers want from a DMS, and include the statement “[]”.³⁰³
259. One of the outcomes of that planning session was a document which lists the “[]”.³⁰⁴

²⁹⁹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³⁰⁰ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³⁰¹ [], provided by email by Russell McVeagh to the Commerce Commission (2 November 2017).

³⁰² [], provided by email by Russell McVeagh to the Commerce Commission (2 November 2017).

³⁰³ [], provided by email by Russell McVeagh to the Commerce Commission (2 November 2017).

³⁰⁴ [], provided by email by Russell McVeagh to the Commerce Commission (2 November 2017).

[] The document also noted that, “[]”.

260. The next significant stage in []]. A document entitled “[]” set out Trade Me’s [] and its plans to []. The document identified []: ³⁰⁵

[

]

261. The document identified the following key issues arising from []:

[

]

262. The document goes on to discuss possible solutions, ultimately recommending []:

³⁰⁵ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

[

]

263. One of the measures of success of the project was identified as follows:

[

]

264. Trade Me submitted that the above document was “[]”.³⁰⁶ However, []³⁰⁷ and we note that []³⁰⁸. The content is also generally consistent with other internal documents submitted by Trade Me.

265. A CEO report to the Trade Me Board on 10 November 2016 indicated that [] had commenced:

[

]

266. Around March 2017, it appears that Trade Me []³⁰⁹. An internal email between Trade Me senior management signalled []:

[

]

³⁰⁶ Trade Me’s Response to Supplementary Letter of Issues, 21 November 2017, at [45].

³⁰⁷ Commerce Commission interview with Trade Me (24 November 2017).

³⁰⁸ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017). []:

³⁰⁹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

267. The same email noted that [], but said that [] would be difficult:

[

]

268. The evidence we found indicates that talks with Motorcentral about a possible acquisition started around the same time as the above email was sent. After a meeting between Motorcentral and Trade Me, Motorcentral sent a follow-up email in which it []:³¹⁰

[

]

269. Trade Me responded to [], noting.³¹¹

[

]

270. []:³¹²

[

]

³¹⁰ [Commission (24 October 2017).

], provided by email by Russell McVeagh to the Commerce

³¹¹ [Commission (24 October 2017).

], provided by email by Russell McVeagh to the Commerce

³¹² [Commission (24 October 2017).

], provided by email by Russell McVeagh to the Commerce

[]

271. Discussions between Trade Me and Motorcentral continued until around May 2017, when Trade Me sought approval from its Board to acquire Motorcentral. In preparation for the Board meeting, Trade Me senior management drafted speaking notes for their presentation to the Board in an 8 May 2017 email. Those notes included the following statement:³¹³

[]

272. An email between the authors of the speaking notes discussed the point made that []. In that email, the Head of Trade Me Motors stated “[]”.³¹⁴ The answer given is:

[]

273. A paper was presented to the Board accompanying the recommendation to acquire Motorcentral. It sets out the rationale for the acquisition:³¹⁵

[]

274. This rationale is consistent with Trade Me’s FY17 Motors Strategy (discussed above), which noted that [].³¹⁶

³¹³ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³¹⁴ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³¹⁵ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 2.

275. The Board paper then discussed the timing of the acquisition, referring to Trade Me’s []:³¹⁷

[]

276. Finally, the Board paper listed alternatives to an acquisition of Motorcentral that management had considered. Listed first is “[]”. Under the heading of “Consideration”, the paper stated:³¹⁸

[]

277. Other []:³¹⁹

277.1 [];

277.2 [];

277.3 [];

277.4 [].

³¹⁶ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³¹⁷ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 16.

³¹⁸ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 19.

³¹⁹ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 19.

278. It appears that at the same Board meeting where the Motorcentral acquisition was discussed, the Trade Me FY18 Motors Strategy was presented to the Board.³²⁰ That paper noted that
[

].

279. On [] 2017, Trade Me management confirmed to the Board that it was proceeding with the Motorcentral acquisition.³²¹ The sale and purchase agreement was signed on [] 2017.³²²

280. Trade Me continued to make improvements to DealerBase during the acquisition process. A 28 June 2017 CEO report to the Board recorded that “[
]”.³²³ This appears to be
[
].³²⁴

281. During our investigation,
[
]. On [], Trade Me
[]].

Our assessment

282. We consider that, absent the acquisition, Trade Me would likely continue to invest in DealerBase to be more competitive in the DMS market.

283. Trade Me’s internal documents show [].
This is because Trade Me [].

284. Trade Me has been [].
[]

³²⁰ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³²¹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³²² Sale and Purchase Agreement, submitted as Confidential Appendix Five to Application.

³²³ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

³²⁴ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

- [redacted]. Trade Me had [redacted]. The evidence shows that Trade Me has made some improvements to DealerBase, [redacted].
285. If the acquisition of Motorcentral did not proceed, it is likely that Trade Me would continue to invest in DealerBase [redacted]. Trade Me may not [redacted]. As we discuss later in the competition analysis, a quality-improved DealerBase is likely to be attractive to dealers.
286. There is some evidence to suggest that [redacted]. Trade Me's [redacted].³²⁵ The timeframe is likely to depend on the extent and nature of the improvements being considered. An earlier document, which considered [redacted].³²⁶ Given [redacted], we consider that there is a real chance that stronger competition from DealerBase would emerge within 6-12 months and that competition would strengthen over two to three years as Trade Me continued to invest.
287. We also consider that, absent the acquisition, Trade Me and Motorcentral could [redacted]. However, we are not satisfied that this means that Trade Me would not continue to invest in DealerBase.
288. Trade Me's internal documents show that [redacted]. [redacted] would likely fall short of this objective. For example:
- 288.1 Trade Me noted that [redacted].³²⁷ In relation to the latter issue, we note that the Head of Trade Me Motors had earlier

³²⁵ [redacted], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³²⁶ [redacted], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³²⁷ "Trade Me Board Paper May 2017", submitted as Confidential Appendix Four to Application, at 19.

[]³²⁸

288.2 One of the key synergies of the acquisition for Trade Me would be

[

] ³²⁹). Evidence on the early stages of

[

] indicated that

[

].³³⁰

289. The issues above illustrate that Trade Me and Motorcentral [], or that if []. In this respect, we note that Motorcentral has also previously []. In an internal document from March 2017, it stated:³³¹

[

]

290. []

291. Finally, we note that

[

].³³²

³²⁸ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³²⁹ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017) at 11.

³³⁰

“[]”: [], provided by email by Russell McVeagh to the Commerce Commission (21 February 2018).

³³¹ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

³³² We also note that [

Conclusion

292. Accordingly, we consider that, absent the acquisition, Trade Me would likely continue to invest in DealerBase to be more competitive in the DMS market. Trade Me may not develop DealerBase to the point it is as sophisticated as Motorcentral. However, given the importance of DMSs as a route to market on the dealer side of listings platforms [], we consider that Trade Me would likely be motivated to improve DealerBase and has the ability to do so.

Conclusion on relevant counterfactual

293. Accordingly, we consider that, absent the acquisition, it is likely that that:

293.1 Motorcentral would seek to expand in the advertising market via its Need-a-Car listings platform, and would also continue to facilitate entry into the advertising market where opportunities arise; and

293.2 Trade Me would continue to invest in DealerBase to be more competitive in the DMS market.

Difference between the factual and counterfactual

294. Trade Me submitted that [] then there could be no substantial lessening of competition in any market due to either vertical or horizontal effects.³³³ That is, [].

295. We consider it unlikely that the vertical integration with a developed DealerBase would replicate the outcome of the acquisition. Trade Me's submission implicitly assumes that, in the counterfactual, [].

296. However, DealerBase would face competition in the DMS market from the incumbent Motorcentral, which has a large installed base of sticky customers. Additionally, Trade Me would likely also face competition in the advertising market from any other new entrants whose entry Motorcentral is likely to be able to facilitate by providing ready access to a critical mass of dealer listings. We consider that the most significant entry threats to Trade Me are likely to come from potential entrants with an established audience base (such as Facebook).

297. We consider that the merged entity's ability and incentive to foreclose in the factual would be substantially different compared with Trade Me's ability and/or incentive in the counterfactual. In the counterfactual Trade Me would have market power in

[]: Commerce Commission interview with Trade Me (16

February 2018).

³³³ Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [41]–[45].

the advertising market but not in the DMS market. It would have no ability to foreclose rival listings platforms as Motorcentral would continue to be rivals' major independent source of listings data. Likewise, foreclosure of DMS rivals would be risky given the large number of dealers using Motorcentral that would have inferior access to Trade Me as a result. Because of this higher risk, Trade Me's incentive to foreclose DMS rivals would be significantly lower than it would be in the factual, or non-existent.

How the acquisition could substantially lessen competition

298. In the sections below, we consider the horizontal effects of the acquisition in each of the advertising and DMS markets, followed by an assessment of the vertical effects in those markets.
- 298.1 First, we assess the loss of competition between Trade Me and Need-a-Car in the advertising market. We find that, while there would be some loss of competition between Trade Me and Need-a-Car, we are satisfied that the acquisition would not be likely to have the effect of substantially lessening competition in the advertising market due to horizontal effects alone;
- 298.2 Second, we consider the loss of competition between DealerBase and Motorcentral in the DMS market. We find that the loss of competition between DealerBase and Motorcentral would be likely to have the effect of substantially lessening competition in the DMS market due to horizontal effects alone; and
- 298.3 Finally, we undertake a vertical effects analysis which focuses on whether the acquisition – which would result in Trade Me becoming vertically integrated with Motorcentral – would be likely to substantially lessen competition by increasing Trade Me's ability and incentive to foreclose its actual and potential competitors in the advertising and DMS markets. We find that the acquisition would be likely to substantially lessen competition in both the advertising and DMS markets due to vertical effects. Trade Me's ownership of Motorcentral would likely protect or enhance Trade Me's market power in the advertising and DMS markets by providing it with the ability and incentive to foreclose its actual and potential competitors in both these markets.
299. We assess the horizontal and vertical effects of the acquisition separately. While it is necessary to examine each of those potential effects in turn, the ultimate question we are required to consider is whether we are satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any market.
300. While we commonly assess competition effects over the short term (up to two years), the relevant timeframe for assessment depends on the circumstances. A longer timeframe will be appropriate if, on the evidence, competition effects are likely to arise or increase in later years.³³⁴ In this application, we assess the

³³⁴ *Woolworths & Ors v Commerce Commission* (HC) above n10 at [131].

horizontal effects of the acquisition over a period of around two to three years to take into account the prospective development of DealerBase and Need-a-Car without the acquisition.

301. The relevant timeframe to assess the vertical effects of the acquisition depends on when entry and expansion might occur and therefore when the competition effects of foreclosure would begin to occur. As we discuss below, we consider that entry would be likely to occur in the near future, and we have therefore also conducted our analysis for vertical effects over a two to three year timeframe. However, we consider that the competition effects of the acquisition would be likely to continue beyond three years, given the ongoing potential for the acquisition to foreclose future entry.

Horizontal effects in the advertising market

302. Horizontal unilateral effects arise when a firm acquires a competitor that would otherwise provide a significant competitive constraint. The merged firm can therefore profitably increase price above the level or reduce quality below the level that would prevail without the acquisition, without being thwarted by rival firms' competitive responses.³³⁵
303. Horizontal unilateral effects may also arise when an existing firm acquires a potential or emerging competitor. In such a case, the acquisition may preserve the market power of the existing firm that would have otherwise been threatened by the potential or emerging competitor.³³⁶
304. We consider below the impact on the advertising market of the loss of competition between Trade Me and Need-a-Car. While we consider that the acquisition would likely result in the loss of some competition, we are satisfied that the acquisition would not result in a substantial lessening of competition in the advertising market due solely to the acquisition of Need-a-Car as an existing and emerging competitor.

Loss of competition between Trade Me and Need-a-Car

305. We identified above that Trade Me currently faces limited existing competition in the advertising market. We assessed whether, absent the acquisition, Need-a-Car would likely grow to become a stronger constraint on Trade Me.
306. Both Trade Me and Motorcentral submitted to the Commission that Need-a-Car was unlikely to grow into a significant constraint on Trade Me and accordingly horizontal issues in the advertising market were unlikely to result.³³⁷

³³⁵ For simplicity, when we refer to concerns that the acquisition may result in an increase in price, this also includes the possibility that the impact of the acquisition is a reduction in quality or some combination of a price and quality effect.

³³⁶ *Mergers and Acquisitions Guidelines* above n4 at [3.62]-[3.63].

³³⁷ See for example Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [86]-[97].

307. While Need-a-Car is a new entrant in the advertising market with a relatively small presence, we note that acquisitions of innovative start-up businesses by large firms with market power can raise significant competition concerns.³³⁸
308. These concerns may be more acute in digital markets with a large incumbent protected by strong network effects, such as the advertising market under consideration in this case.³³⁹
309. Competition from Need-a-Car could have a significant competitive impact in the advertising market, particularly as Trade Me currently faces limited competition and has market power. Trade Me’s acquisition of Motorcentral would prevent Need-a-Car’s potential competitive impact from playing out. In this context, we are required to consider the likelihood, based on necessarily limited evidence, that Need-a-Car would be likely to develop into a significant competitor.
310. There were some indications that Need-a-Car is well-positioned to challenge Trade Me in the advertising market. Motorcentral is an innovative firm with demonstrated capability of developing products which meet the needs of its customers. Need-a-Car is vertically integrated with the leading DMS (ie, Motorcentral) and therefore has a source of a large amount of vehicle listings data – something that would greatly help it to establish scale on the dealer side of its listings platform. It has established relationships with a large number of dealers, the platform appears to be well-designed (Motorcentral describes it as a “[m]odern, fast, fresh, responsive design”³⁴⁰), and feedback we received from dealers indicated that there was demand for an online classified advertising platform such as Need-a-Car. One of Motorcentral’s objectives in developing Need-a-Car is to “[]”.³⁴¹
311. However, Need-a-Car is likely to face obstacles in expanding to become a stronger constraint on Trade Me. The main difficulty that new entrants and existing competitors have faced in growing to compete with Trade Me is attracting a substantial audience of potential vehicle buyers. There are several instances, discussed earlier in the current state of competition section, of rivals failing to attract sufficient audience to be competitive.
312. In contrast to potential new entrants such as Facebook, Need-a-Car does not have an established audience base. It must therefore attract audience through marketing. However, Motorcentral is a relatively small business and may find it difficult to finance the necessary marketing expense to generate audience. Motorcentral told the Commission that “[]”

³³⁸ Herbert Hovenkamp, “Prophylactic Merger Policy” (2018) *Faculty Scholarship*, at 24-26.

³³⁹ Terrell McSweeney and Brian O’Dea “Data, Innovation and Potential Competition in Digital Markets – Looking Beyond Short-Term Price Effects in Merger Analysis” (2018) 1(2) *CPI Antitrust Chronicle* 7 at 8, 10.

³⁴⁰ [], provided by email by Webb Henderson to the Commerce Commission (4 August 2017), at 65.

³⁴¹ [], provided by email by Webb Henderson to the Commerce Commission (4 August 2017).

]”.³⁴²

313. We also note that Motorcentral may not have a strong incentive to incur costs to attract audience, given that it has recently facilitated Driven’s entry into the advertising market []. In this respect, Motorcentral told the Commission that “[]”.³⁴³ A Motorcentral internal document stated that it was aiming for revenue of \$[] a year from Need-a-Car, a relatively small amount compared to the revenue generated in the advertising market.³⁴⁴ Motorcentral also commented that Need-a-Car “[]”.
314. Trade Me’s own assessment of Need-a-Car was that []. Although Trade Me’s Motorcentral Acquisition Board document identified a risk that [], it stated that it was “[]”.³⁴⁵ An internal email from Trade Me’s Chief Executive stated that “[]”.³⁴⁶ The email showed []. As a result of these concerns, Trade Me intended to [] following the acquisition.³⁴⁷
315. While there are significant challenges in predicting the competitive impact of a nascent competitor such as Need-a-Car, we reached the view that, although there is some prospect of Need-a-Car becoming a stronger constraint on Trade Me, there is unlikely to be a real chance of that occurring.

Conclusion

316. We are therefore satisfied that, while there would likely be some loss of competition between Trade Me and Need-a-Car, the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the advertising market as a result of horizontal effects alone. However, as set out in our vertical effects analysis, we are of the view that Trade Me’s acquisition of Motorcentral

³⁴² Commerce Commission interview with Motorcentral (4 October 2017).

³⁴³ Commerce Commission interview with Motorcentral (4 October 2017).

³⁴⁴ [], provided by email by Webb Henderson to the Commerce Commission (4 August 2017).

³⁴⁵ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 10.

³⁴⁶ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³⁴⁷ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 25.

would likely result in a substantial lessening of competition in the advertising market by enabling Trade Me to, in particular, delay or prevent future entry into this market.

Horizontal effects in the DMS market

317. We considered whether there would likely be a substantial lessening of competition in the DMS market as a result of the direct loss of competition between DealerBase and Motorcentral. As part of this, we also considered whether entry and expansion would counteract the loss of competition between DealerBase and Motorcentral, and whether dealers would exert any countervailing power to constrain any exercise of market power by Trade Me.
318. For the reasons below, we are not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the DMS market as a result of horizontal effects.

Loss of competition between DealerBase and Motorcentral

319. We assessed the extent to which DealerBase and Motorcentral would compete against each other in the counterfactual to understand the degree of competition that would be lost as a result of the acquisition.
320. As we discussed above, Motorcentral serves much of the DMS market, with its existing main rivals having a combined market share of only about []% of independent dealers and the remaining approximately []% of independent dealers either not using a DMS or using DealerBase. These latter shares are declining over time as Motorcentral grows. As such, there would be a large aggregation in the DMS market if DealerBase would be likely to develop into a stronger competitor absent the acquisition.
321. There were some indications that some dealers might already view DealerBase as an alternative to Motorcentral, particularly small independent dealers who do not require more sophisticated software. For example, the parties' term sheet for the acquisition provided that,
[
].³⁴⁸ This is consistent with Trade Me's submission that:³⁴⁹

[t]o the extent that there are some dealers that are so small that they can manage their inventory and operations on a basic excel spreadsheet, they may only use DealerBase and other simple tools, but that does not mean DealerBase is a substitute for a DMS for the balance of the market.

322. However, the evidence generally indicated that the constraint that DealerBase currently imposes on Motorcentral is likely to be limited. DealerBase lacks much of the functionality that would ordinarily be associated with a DMS, and it appears that

³⁴⁸ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³⁴⁹ Application, at [9.15].

Motorcentral does not view DealerBase as a significant existing competitor. For example, [redacted].³⁵⁰

323. While the constraint that DealerBase currently imposes on Motorcentral is likely to be limited, in our discussion of the counterfactual above we found that Trade Me would likely continue to invest in DealerBase to be more competitive in the DMS market. The evidence showed that Trade Me had been [redacted].
324. Trade Me would likely face some difficulties in successfully competing against Motorcentral. As discussed below, there are obstacles to entry and expansion in the DMS market and Trade Me has recognised [redacted]. For example, a senior Trade Me executive commented that Motorcentral was “[redacted]”, and therefore “[redacted]”.³⁵¹ Additionally, there is evidence consistent with Trade Me’s submission that [redacted].³⁵²
325. However, as we discussed above in the counterfactual section, Trade Me has been [redacted]. After [redacted], Trade Me sought to [redacted]. We consider that if the acquisition of Motorcentral did not proceed, Trade Me would likely continue to invest in DealerBase [redacted].
326. Trade Me has an incentive to provide an attractive offering in the DMS market, [redacted]. Trade Me is relatively unique in this regard, as it stands to gain from increased revenue from products (such as advertising and VIRs) that are marketed through DMSs. This motivation gives it a stronger incentive than firms which do not have the same opportunity to market and connect to other products through DMSs.
327. Trade Me’s resources and significant software development expertise would position it well to make significant improvements to DealerBase. Trade Me may not develop DealerBase to be as sophisticated as Motorcentral, or to match its level of functionality, but it is likely that it would develop DealerBase to be more competitive.

³⁵⁰ [redacted], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

³⁵¹ [redacted], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³⁵² For example, [redacted], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

328. A quality-improved DealerBase, which may continue to be provided free with Trade Me advertising packages, would likely be attractive to dealers, especially those who are more price-sensitive and may not require the level of functionality that Motorcentral provides. Additionally, Trade Me would be likely to ensure that DealerBase has good interaction with Trade Me, which dealers are likely to find attractive.
329. For these reasons, Trade Me is likely to be best-placed to compete against Motorcentral in the DMS market absent the acquisition. We consider that Trade Me would likely continue to develop DealerBase and that the rivalry between DealerBase and Motorcentral would be the main area of competition in the DMS market. The acquisition would therefore likely result in a large aggregation in the DMS market, with DealerBase and Motorcentral serving most independent dealers. Motorcentral would be likely to respond to increasing competition from DealerBase by reducing price, improving the quality of its offer, and/or seeking greater innovation. In our view, independent dealers would benefit from the competition between DealerBase and Motorcentral absent the acquisition.
330. In contrast, we saw evidence that Trade Me [] post-acquisition, which would make independent dealers worse off. Trade Me provided []³⁵³. []
[]. Trade Me submitted that []³⁵⁴.
331. As a consequence of Trade Me's likely development of DealerBase absent the acquisition, and the benefits that competition between DealerBase and Motorcentral would be likely to deliver to dealers (including more restrained pricing), we consider that it is likely that the acquisition would result in a substantial loss of competition between DealerBase and Motorcentral.

Potential competition

332. Given Motorcentral's strong position in the DMS market, and the limited other existing competition, we assessed whether new entry and expansion would be likely to counteract the anticompetitive effects of the acquisition described above.
333. We assess whether entry by new competitors or expansion by existing competitors is likely to be sufficient in extent in a timely fashion to constrain the merged firm and prevent a substantial lessening of competition. This is referred to as the 'LET test'.³⁵⁵

³⁵³ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³⁵⁴ Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [51].

³⁵⁵ *Mergers and Acquisitions Guidelines* above n4 at [3.95].

334. For the reasons below, we consider that entry and/or expansion would be unlikely to meet the LET test and therefore is unlikely to prevent a substantial lessening of competition.

Our assessment

335. Earlier in these reasons, we identified that there are market conditions which are likely to make entry and expansion in the DMS market difficult. Those included switching costs, the stickiness of Motorcentral’s customers, sunk development and marketing costs, and the perception that profitable entry into the DMS market would be difficult.
336. Consistent with the existence of conditions in the DMS market that make it hard to enter and expand, there has been limited interest in entry and/or expansion from existing or potential rivals we interviewed during the course of the investigation. Franchise DMS businesses did not express any interest in entering the independent dealer DMS market.³⁵⁶ [] told the Commission that “we stay away” from independent dealers and that “it’s not a space we see as desirable”.³⁵⁷ [] said that entering the independent dealer DMS market would be difficult and uncertain, and that it had no appetite to do so.³⁵⁸ [] told the Commission that if it were to [] it would be directed solely at franchise dealers.³⁵⁹ [] said that prices would need to increase to around \$[] a month (Motorcentral currently charges around \$120 to \$140 a month) for it to consider targeting independent dealers.³⁶⁰
337. We are aware that there has been recent new entry into the independent dealer DMS market by Virtual Yard. However,
[]³⁶¹
338. In addition to the existing conditions of entry and expansion in the DMS market, the acquisition would likely change the market conditions to make it harder to enter and expand. Integration with Trade Me, a ‘must have’ platform for dealers to advertise on, would likely give Motorcentral an advantage which other DMSs are unable to replicate. Such advantages could include, for example, preferential access to the Trade Me platform. This would likely make dealers using Motorcentral even more sticky than they are currently.
339. As we discuss in the vertical effects section below, it is likely that the acquisition would increase Trade Me’s ability and incentive to foreclose existing and potential competition in the DMS market, which would make entry or expansion significantly

³⁵⁶ Commerce Commission interviews with []; []; []; and [].

³⁵⁷ Commerce Commission interview with [].

³⁵⁸ Commerce Commission interview with [].

³⁵⁹ Commerce Commission interview with [].

³⁶⁰ Commerce Commission interview with [].

³⁶¹ Commerce Commission interview with [].

more difficult. This would further inhibit rivals from responding to any exercise of market power by Trade Me.

340. The prospect of such conduct, and possible retaliation to new entry by the well-resourced merged entity, would likely deter entry and expansion. [] told the Commission that the acquisition would “disincentivise competition” while [] DMS provider to franchise dealers, indicated that the acquisition could discourage entry.³⁶² We note that there were, however, some industry participants that considered that ownership of Motorcentral by Trade Me could motivate dealers to switch away from Motorcentral.³⁶³
341. In light of the existing conditions of entry and expansion in the DMS market, as well as those created by the acquisition, we do not consider that entry and expansion would be likely to meet the LET test and counteract the anticompetitive effects of the acquisition.

Countervailing power

342. As part of our assessment of the likelihood of a substantial lessening of competition, we also considered whether dealers would be able to respond and exert pressure on Trade Me following the acquisition to prevent or limit its exercise of market power.
343. Neither Trade Me nor Motorcentral (or any other industry party) specifically submitted that independent dealers could exercise any countervailing power.³⁶⁴ We consider that independent dealers do not have countervailing power, in large part as they are a fragmented customer base and so are unlikely to sponsor entry or self-supply.
344. While dealers could collectively sponsor entry of a new DMS, we consider that would be unlikely without very substantial price increases because of the costs required.
345. We did not find any evidence of independent dealers acting collectively or expressing any desire to do so. In addition, we consider the volume of independent dealers across New Zealand would make coordination challenging in any event. Further, Motorcentral’s market share estimates indicate that only a minimal number of dealers use a DMS that they have built themselves.³⁶⁵ While one dealer indicated that it was planning to build its own system, it indicated that this would take three

³⁶² Commerce Commission interviews with [] and [].

³⁶³ Commerce Commission interview with [].
[]: Commerce Commission interview with [].

³⁶⁴ As noted above, both Trade Me and Motorcentral submitted that barriers to entry in the DMS market were low. See for example Trade Me’s Response to Letter of Issues, 14 September 2017, at [45]–[53], [60]; Trade Me’s Response to Supplementary Letter of Issues, 24 November 2017, at [51]–[60].

³⁶⁵ Based on Motorcentral’s estimates, only []% of dealers use a “local system”: [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017). We consider that it is unlikely that many, if any, of these systems are comparable to a DMS.

years.³⁶⁶ We do not consider that this isolated example is indicative of other dealers' likely post-acquisition behaviour.

Conclusion

346. We are not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the DMS market as a result of horizontal effects.
347. Absent the acquisition, competition from DealerBase would be likely to reduce the market power that Motorcentral holds in the DMS market. As we discuss below, with the acquisition Trade Me would likely leverage Motorcentral's market power to foreclose existing and potential competition in the advertising market.

Vertical effects arising from the integration of Trade Me and Motorcentral

348. For the reasons we set out below, we are not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the advertising and DMS markets as a result of vertical effects.

Framework for assessment

349. A substantial lessening of competition can arise when one party acquires another party that is not a competitor in the same market, but is a participant in a related market. This can occur where the acquisition gives the acquiring firm a greater ability and/or incentive to engage in conduct that prevents or hinders rivals from competing effectively in either market.³⁶⁷ The means through which a firm could achieve this include:³⁶⁸
- 349.1 foreclosure of rivals by raising their costs. For example, by increasing the price of an input or degrading its quality, therefore weakening the ability of rivals to compete; and/or
- 349.2 predation of rivals by offering an excessively low price in competition for one product in order to deny business to rivals and weaken their ability to compete.
350. A substantial lessening of competition may arise where the increased likelihood of such conduct would make entry and expansion more difficult, or would otherwise reduce an existing or potential competitor's ability to provide a competitive constraint. The conduct does not need to force a competitor to exit the market to have this effect.³⁶⁹ Conduct that inhibits a rival from competing effectively or delays entry may substantially lessen competition, notwithstanding that entry may ultimately occur. The effect of this conduct could be to achieve, maintain, or enhance market power resulting in higher prices, or reduced quality, investment, or

³⁶⁶ Commerce Commission interview with [redacted].

³⁶⁷ *Mergers and Acquisitions Guidelines* above n 4 at [5.1]-[5.2].

³⁶⁸ See for example Michael Katz, "Exclusionary Conduct in Multi-Sided Markets" (15 November 2017) at [5].

³⁶⁹ *Mergers and Acquisitions Guidelines* above n4 at [5.10].

innovation than would occur absent the acquisition.³⁷⁰ These effects of vertical integration are referred to as vertical effects.

351. Recent research has highlighted concerns about foreclosure particularly in digital markets where access to data is important to competition between firms. In this context, data can be regarded as an important input into competitors' offerings. A joint report on "Competition Law and Data" by the competition authorities for France and Germany notes that "[to] get better access to data, a first corporate strategy is to acquire other companies owning large datasets".³⁷¹ It observes that:³⁷²

In many markets, a merger between an established undertaking and an innovative newcomer has only a low impact on the existing market structure because of the newcomer's low market shares or even the absence of horizontal overlap. However, in data-related markets, such a merger could result in differentiated data access and increase the concentration of data related to this market if the newcomer has access to a large database (gained on another market for instance).

352. This acquisition would combine the vehicle listings data held in DealerBase with that held in Motorcentral, increasing the amount of data controlled by Trade Me. According to data supplied by Trade Me, approximately []% of Trade Me's dealer listings are received from DealerBase and Motorcentral.³⁷³

353. The Competition Law and Data report goes on to note that:³⁷⁴

a merger of two companies which already hold strong market positions in separate upstream or downstream markets can foreclose these markets for new competitors. For instance, online service providers consuming big personal data volumes may want to acquire producers of computers, smartphones or softwares in order to make sure to continue to access important amounts of data through users of these services.

354. This application involves a firm that already holds market power in one market seeking to acquire another firm with market power in a vertically related market – that is, Trade Me, a firm which has market power in the advertising market, is seeking to acquire Motorcentral, a software firm with market power in the DMS market. The acquisition would give Trade Me sole control of the largest source of listings data – data that Trade Me and its rivals need access to.
355. Cross-platform network effects can exacerbate the competitive effects of exclusionary conduct in platform markets such as the advertising market under consideration here. Such conduct may, for example, result in users on one side of a platform using only one platform, where otherwise they might have used more than one. The consequent loss of users on one side of rival platforms further reduces their attractiveness to users on the other side.³⁷⁵

³⁷⁰ Steven C Salop, "Invigorating Vertical Merger Enforcement", Yale LJ (forthcoming) at 12.

³⁷¹ Autorité de la Concurrence & Bundeskartellamt, *Competition Law and Data* (10 May 2016), at 16.

³⁷² Ibid.

³⁷³ Email from Russell McVeagh to the Commerce Commission (31 January 2018).

³⁷⁴ *Competition Law and Data* above n371 at 16.

³⁷⁵ Michael Katz, "Exclusionary Conduct in Multi-Sided Markets" (15 November 2017) at [71].

Ability to foreclose

Introduction

356. A firm may have the ability to foreclose where it has market power at one or more levels of the supply chain, and so controls a significant proportion of an input or customer base.³⁷⁶ We considered whether Trade Me would have the ability to foreclose rivals in each of the advertising and DMS markets post-acquisition.
357. As set out in our horizontal effects analysis, we consider that Trade Me would likely have market power in both the advertising and DMS markets with the acquisition. We consider that it would likely have a range of options available to it to foreclose rivals in both the advertising and DMS markets.

Parties' views

358. Trade Me submitted that it would not have the ability to foreclose rivals in the advertising market as a result of the acquisition. It said that the listings data that Motorcentral holds is relatively insignificant, that [], and that a significant proportion of total motor vehicle advertising revenue is available from dealers that do not use Motorcentral.³⁷⁷
359. Trade Me also submitted that rivals would have other ways of accessing the listings data held in Motorcentral, which meant that rivals would not be foreclosed.³⁷⁸ These included having dealers manually enter listings data for individual vehicles into rival listings platforms (or having the rival offer the data entry service), scraping listings data from dealer's own websites, having dealers use Motorcentral's general data export function, and using alternative uploading services (eg, those provided by Autoplay and CarUpdater). We discuss whether these methods would likely be effective below.
360. In an attempt to mitigate our concerns over Trade Me's ability to foreclose rivals in the advertising market, Trade Me [].³⁷⁹
[].
361. Trade Me submitted that it would not have the ability to foreclose rivals in the DMS market.³⁸⁰

Others' views

362. Rival listings platforms considered that Trade Me would have the ability to foreclose with the acquisition. [] submitted that Trade Me could achieve this by

³⁷⁶ *Mergers and Acquisitions Guidelines* above n4 at [5.7].

³⁷⁷ Trade Me's Response to Letter of Issues, 14 September 2017, at [62].

³⁷⁸ Trade Me's Response to Letter of Issues, 14 September 2017, at [71]-[101].

³⁷⁹ [], provided by email by Russell McVeagh to the Commerce Commission (31 January 2018).

³⁸⁰ Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [56].

turning off the listings upload option in Motorcentral or by using differential pricing (eg, charging rival listings platforms to receive listings data but not Trade Me).³⁸¹ [] submitted that Trade Me would have the ability to foreclose advertising rivals because Motorcentral has market power and the ability to inhibit access to its listings data.³⁸² [] submitted that this could be through a simple refusal to provide for uploads of that data, increasing the price to upload, or degrading the quality of the upload.

363. [], told us that Trade Me is looking to tie up the advertising market by controlling dealer uploads of listings data to listings platforms.³⁸³ It submitted that “[t]here are numerous ways for Trade Me to block, restrict and deny competitor access to bulk uploads [of listings data] (administratively, punitively, and functionally)”.³⁸⁴ [] noted that controlling data to create an artificial barrier to entry is a concern with vertical integration, and is what currently happens in the Australian market.³⁸⁵ [] told the Commission that Trade Me could charge whatever it likes for listings data and that this would prohibit all sorts of data distribution models.³⁸⁶
364. DMS providers indicated that there would be a number of ways that Trade Me could foreclose DMS rivals with the acquisition.
- 364.1 [] said that Trade Me could impede other DMSs from uploading listings data to Trade Me (eg, by changing the file input without informing the DMS); or it could implement instant, synced updates of listings data from Motorcentral directly to Trade Me rather than a delay-based system.³⁸⁷
- 364.2 [] told the Commission that it was concerned about the ability of other DMSs to continue to communicate with the Trade Me platform if the acquisition occurred, as well as the ability of Trade Me to impose charges on those DMSs to communicate with the Trade Me platform.³⁸⁸
- 364.3 [] said that Trade Me could slow down the processing of data sent by DMSs other than Motorcentral, and add new features that only Motorcentral has access to. However, [] considered that the acquisition would provide

³⁸¹ [].

³⁸² []; [].

³⁸³ Commerce Commission interview with [].

³⁸⁴ Email from [] to the Commerce Commission (19 December 2017).

³⁸⁵ Commerce Commission interview with [].

³⁸⁶ Commerce Commission interview with [].

³⁸⁷ Commerce Commission interview with [].

³⁸⁸ Commerce Commission interview with [].

an opportunity as it could motivate Motorcentral dealers to switch.³⁸⁹

364.4 [] was concerned that Trade Me would provide a significant discount for Motorcentral to encourage greater uptake of Trade Me advertising.³⁹⁰

Our assessment of the ability of Trade Me to foreclose advertising rivals

365. We consider that Trade Me would likely have the ability to foreclose rival online classified advertising platforms.
366. As discussed above, DMSs play an important role in competition between listings platforms in the advertising market. Listings platforms need access to dealer listings data to compete in that market, and the main way they access that listings data is via uploads from DMSs.
367. Among DMSs, Motorcentral plays a particularly important role. It holds data for approximately [] vehicles which could be listed for sale on listings platforms. Trade Me receives approximately []% (about [] listings) of its total dealer listings (including independent and franchise dealer listings) from uploads from within Motorcentral. However, this percentage is likely to be much higher for independent dealer listings given Motorcentral's strong position in the DMS market. Bauer provided data showing that approximately []% of Autotrader's listings are uploaded from Motorcentral,³⁹¹ while NZME estimated []% to []% of Driven's listings are sourced from Motorcentral (but did not provide supporting data).³⁹²
368. In addition, Trade Me sources about []% (around [] listings) of its total dealer listings from dealers which use DealerBase as their main software tool, most or all of which are likely to be independent dealer listings.³⁹³ This means that Trade Me would have control of DMSs (ie, Motorcentral and DealerBase) that hold approximately []%-[]% of independent dealer listings.³⁹⁴
369. In total, with the acquisition Trade Me would hold almost []% of the total dealer listings on its platform, with a significantly higher percentage of independent dealer listings. Access to this listings data is likely to be important to the success and competitive strength of listings platforms. This is especially the case where firms

³⁸⁹ Commerce Commission interview with [].

³⁹⁰ Commerce Commission interview with [].

³⁹¹ Email from Bell Gully to the Commerce Commission (30 January 2018).

³⁹² Commerce Commission interview with NZME (4 August 2017). This is consistent with figures provided by Motorcentral: Motorcentral response to Commerce Commission information request dated 4 October 2017 (5 October 2017).

³⁹³ That is, without using the upload function in a DMS: Email from Russell McVeagh to the Commerce Commission (31 January 2018). Trade Me notes that dealers who upload directly into DealerBase may in fact use a DMS but choose not to use the upload function in that DMS.

³⁹⁴ We calculated this figure based on data provided by Trade Me on where it sources its dealer listings from: Email from Russell McVeagh to the Commerce Commission (31 January 2018). We took the total number of listings supplied by DMSs that target independent dealers, and calculated the number of listings supplied by Motorcentral and DealerBase as a percentage of the total number of listings supplied by DMSs that target independent dealers.

require a critical mass of listings and audience to effectively compete in the advertising market. Access to the large volume of listings data held in Motorcentral would be important in building that scale, especially since the remaining supply of dealer listings is mostly fragmented. As we discuss below, the foreclosure of DMS rivals would likely secure (and enhance) Motorcentral’s position as the major source of listings data to listings platforms, reinforcing Trade Me’s ability to use Motorcentral to foreclose competition in the advertising market.

370. We note Trade Me’s submission that Motorcentral’s data is relatively insignificant. However, an internal Trade Me email describes Motorcentral as []³⁹⁵ and, as outlined above in our assessment of the counterfactual and horizontal effects analysis, Trade Me has been []. Combining the listings datasets of Motorcentral and DealerBase would give Trade Me control of the DMSs holding almost []% of the total dealer listings (including independent and franchise dealers) on its platform and an even larger share of independent dealer listings.
371. We consider the importance of Motorcentral and its data to listings platforms is supported by Motorcentral’s observation that, following acquisition by Trade Me, “[]” (emphasis added).³⁹⁶
372. Currently, dealers can upload their listings data from Motorcentral to several listings platforms. As discussed above, this has resulted in rival listings platforms – in particular Autotrader and Driven – receiving listings via the Motorcentral DMS.³⁹⁷ Motorcentral has also facilitated entry into the advertising market by Driven and its own Need-a-Car platform by facilitating listings to those platforms, and by helping to market Driven to dealers.
373. Following the acquisition, Trade Me would be the sole owner of Motorcentral and would have the ability to control its day-to-day operation and strategic direction. We consider that Trade Me would likely be motivated to explore ways in which it could use Motorcentral (and the listings data it holds) to the detriment of its platform rivals. We do not know all the possible ways in which Trade Me could disadvantage its rivals, given the information advantage that Trade Me would have over the Commission once it owned Motorcentral. However, based on the evidence we found, we consider that the foreclosure strategies open to Trade Me would likely include the following:

³⁹⁵ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

³⁹⁶ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

³⁹⁷ For example, as of October 2017, Autotrader received [] listings from Motorcentral’s DMS and Driven received [] listings: Motorcentral response to Commerce Commission information request dated 4 October 2017 (5 October 2017).

373.1 Charging rival listings platforms [] for receiving listings data uploads. We note that Motorcentral [],³⁹⁸ which it told the Commission [].³⁹⁹ []⁴⁰⁰ []. Trade Me submitted that the amount that it could charge to rival listings platforms would be limited by those rivals' ability to access the data by other means.⁴⁰¹ However, for the reasons we give below, we consider that these other means are unlikely to be effective.

373.2 Discriminating against rival listings platforms in favour of the Trade Me platform. It could do this by, for example, delaying or refusing to provide bulk uploads to rival listings platforms while uploading data to Trade Me instantly, removing the ability to automatically schedule uploads to rival platforms, restricting the amount or type of data sent to rival listings platforms (eg, withholding photos or vehicle feature data) while preferentially enhancing the data sent to Trade Me, and hindering the promotion of rival listings platforms within the Motorcentral DMS while pushing Trade Me advertising.

373.3 Choosing not to assist new entry into the advertising market. Motorcentral has a history of assisting entry and seeking to promote competition to Trade Me (describing itself as a party that “[]”⁴⁰²) and is likely to continue to do this absent the acquisition. Motorcentral, under Trade Me’s control, could decline to upload listings data to a new entrant or refuse to promote the new entrant to its dealers (in contrast to its active promotion of Driven).

374. We consider that these strategies are likely to make it substantially harder to enter and expand by making it more difficult and costly for rival listings platforms to access the listings data held in Motorcentral, and by eliminating Motorcentral as an entry facilitator.

375. We assessed Trade Me’s submission that rival listings platforms would have other means to access the listings data held in Motorcentral. As a starting point, we note that these methods are largely untested in the market – listings platforms have not generally had to resort to them because Motorcentral and other DMSs (excluding

³⁹⁸ Motorcentral []: Motorcentral response to Commerce Commission information request dated 12 September 2017 (19 September 2017).

³⁹⁹ Commerce Commission interview with Motorcentral (4 October 2017).

⁴⁰⁰ Commerce Commission interviews with [] and [].

⁴⁰¹ Trade Me’s Response to Letter of Unresolved Issues, 31 January 2018, at [146].

⁴⁰² [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

DealerBase) have facilitated the upload of listings data. We were not satisfied that the other methods identified by Trade Me would enable rival listings platforms to side-step Trade Me's foreclosure strategies, given the cost, uncertainty and inconvenience that they would involve.

375.1 Manual data entry is likely to impose costs and inconvenience on dealers. Trade Me submitted that listings platforms could undertake manual data entry on behalf of dealers, and said that the cost per listing would be fairly low under its assumptions.⁴⁰³ However, industry parties (including dealers) considered that the total costs incurred could well be too large to make this a viable alternative option, given the frequency with which many dealers update their listings.⁴⁰⁴ For example, [] submitted that it could cost approximately \$[] per year for it to manually upload [].⁴⁰⁵

375.2 Industry parties told the Commission that web scraping would not be a practical alternative to receiving an upload feed even if Trade Me did not implement software preventing automated scraping tools from accessing data⁴⁰⁶ (which it could), and in any event being required to do so would increase both dealers' and rival listings platforms' costs. Trade Me submitted that Trovit⁴⁰⁷ provides an example of a vehicle classifieds business that runs on a scraping business model. However, we note that Trovit partners with other online classifieds businesses to obtain listings and notes that "the ads you see in our search engine are not property of Trovit".⁴⁰⁸

375.3 The general data export functionality in Motorcentral may be of sufficient quality for sending listings data. However, it would be less convenient than a bulk upload option as it would require an additional step for the dealer to upload listings. It was also not clear that dealers could effectively automate the sending of data using this option or whether it would be as seamless as the dedicated bulk upload option. Furthermore, Trade Me could remove this functionality or impose a cost for using it (as Trade Me does for the function in DealerBase).

375.4 Using upload services is likely to increase the costs to dealers (and potentially rival listings platforms if they need to compensate dealers for this cost) as providers of upload services typically charge for their services, often more

⁴⁰³ See for example Trade Me's Response to Letter of Issues, 14 September 2017, at [85].

⁴⁰⁴ []. See also Commerce Commission interview with [].

⁴⁰⁵ [].

⁴⁰⁶ Commerce Commission interview with []; []; and Commerce Commission interviews with [].

⁴⁰⁷ Trovit www.trovit.co.nz. See Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [104]

⁴⁰⁸ Trovit "Where do the ads come from?" <https://help.trovit.com/hc/en-gb/articles/211547509-Where-do-the-ads-come-from->.

than the cost of the Motorcentral DMS.⁴⁰⁹ Additionally, Trade Me could charge providers of upload services to receive data from Motorcentral in the first instance.

376. Motorcentral’s ability to [] indicates that access to listings data through the bulk upload method is valuable. If the methods Trade Me identifies were credible, it is unlikely that [].

[]

377. [].⁴¹⁰
[]

378. []
[].⁴¹¹

379. []
[]

380. []
[]

381. []

⁴⁰⁹ For example, Autoplay’s Data & Web Tools package (an uploading tool) is more than three times as expensive as Motorcentral’s DMS product per month. Carupdater is also more expensive per month than Motorcentral, despite being an uploading tool rather than a DMS.

⁴¹⁰ []

⁴¹¹

[]
[]

].

382. [

].

383. Accordingly, [] does not affect our overall conclusion that Trade Me is likely to have the ability to foreclose its rivals in the advertising market.

384. Furthermore, [] does not address our competition concerns concerning Trade Me's ability and incentive to foreclose rivals in the DMS market with the acquisition.

Our assessment of the ability of Trade Me to foreclose DMS rivals

385. We consider that Trade Me would likely have the ability to foreclose rival DMS providers with the acquisition.

386. As we noted above, the ability to upload vehicle listings data to online classified advertising platforms is a key feature of a DMS, as dealers typically use their DMS to upload listings in bulk. The ability to upload to Trade Me is especially important because dealers typically view Trade Me as a 'must have' platform on which to list their vehicles. Due to Trade Me's strong position in the advertising market, DMS suppliers generally indicated that the ability to upload listings to Trade Me from their DMS is an important function.⁴¹²

387. Trade Me is likely to have the ability to foreclose rival DMS suppliers by preventing interaction between rival DMSs and the Trade Me platform (eg, by refusing to accept listings uploads or by changing the format the data must be received in) or by otherwise discriminating against rival DMSs in favour of Motorcentral.

388. Our view is that Trade Me could engage in many forms of discriminatory conduct, including, for example, imposing charges on other DMSs to interact with the Trade Me platform, delaying uploads, or refusing to provide Trade Me advertising performance information. Conversely, Trade Me could preferentially improve the interaction between Trade Me and Motorcentral, including by enabling faster uploads, uploads of a greater range of data (such as videos) and by providing the ability to purchase Trade Me advertising products within the Motorcentral DMS.

⁴¹² As discussed above in the "Role DMSs play in competition between listings platforms" section.

389. Two DMSs told us that they have had issues with uploading listings data to Trade Me because of Trade Me’s “business rules”. These are rules governing which listings data and formats can be uploaded to the platform. For example, [] said that:⁴¹³

[S]ome of the rules are very subtle such as if the vehicle was a trade and had a mileage on it, an odometer reading, and then it was uploaded later with a lower odometer reading, that vehicle would be excluded from Trade Me. So it’s actually quite hard for a dealer to diagnose why a vehicle, which may have been initially presented, is then no longer presented on the website. And I guess through knowledge of some of those exclusions, we can pinpoint them quite quickly.

390. We consider that Trade Me could, for instance, manipulate these business rules to discriminate against other DMSs, and that such conduct may be difficult to attribute to Trade Me.

391. The above examples are unlikely to be exhaustive, and we expect that Trade Me would explore and implement strategies that benefit it to the detriment of its rivals, given its general incentive to maintain and increase DMS market share. We recognise that it is less likely that Trade Me would take measures that are too obvious (such as a total refusal to deal with existing rivals) to avoid reputation risks, although these risks would likely be lower in respect of such conduct directed towards a new entrant. However, Trade Me could engage in a range of measures that, in combination, would likely have a material effect on both existing and potential rivals.

392. Internal Trade Me and Motorcentral documents suggest that Trade Me would likely have the ability to discriminate against other DMSs in favour of the Motorcentral DMS.

392.1 A Motorcentral internal document, in which an acquisition by Trade Me is considered, discussed potential benefits to Motorcentral. It stated “[

]”;⁴¹⁴ and

392.2 Trade Me’s Motorcentral Acquisition Board document lists

[

].⁴¹⁵

⁴¹³ Commerce Commission interview with [].

⁴¹⁴ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

⁴¹⁵ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 22. Trade Me’s intention to “[]” also potentially suggests an intention to [].

393. The foreclosure conduct discussed above would likely harm existing rivals, as it would cause a significant reduction in the quality of the DMS product, particularly compared to the likely preferential treatment given to Motorcentral. The conduct would also make entry and expansion significantly more difficult, particularly if Trade Me refused to receive uploads of listings data from a new entrant.
394. We also note that [] raised a concern that Trade Me could apply a significant discount for Motorcentral to encourage greater uptake of Trade Me’s advertising. This could take the form of a predatory pricing strategy, in which Trade Me priced Motorcentral at below cost. While we have focussed on Trade Me’s ability to foreclose through raising rivals’ costs, we note that recoupment as part of a predatory strategy could occur in the advertising market if this conduct increased the attachment of dealers to Motorcentral and reduced their use of rival listings platforms.

Conclusion

395. We consider that Trade Me’s position of market power in each of the advertising and DMS markets as a result of the acquisition would likely provide it with the ability to foreclose existing and potential advertising and DMS rivals, undermining their ability to effectively compete in both the advertising and DMS markets. Furthermore, the same strategies could be used to foreclose rivals in both markets.

Incentive to foreclose

Introduction

396. We consider whether Trade Me would likely have the incentive to foreclose its advertising and DMS rivals below. Whether Trade Me would have the incentive to foreclose its rivals would depend on whether the expected benefits of foreclosure would be outweighed by the expected costs.
397. We find that Trade Me would likely have an incentive to foreclose rivals in both the advertising and DMS markets.⁴¹⁶

Parties’ views

398. Trade Me submitted that it would have no incentive to foreclose advertising rivals. It said that restricting the ability to upload to rival listings platforms would result in costs to Motorcentral, as dealers would switch away in response, and adversely affect Trade Me’s relationship with dealers, putting its core advertising business at

⁴¹⁶ We carried out quantitative analyses in an attempt to assist our analysis of Trade Me’s incentive to foreclose, which we disclosed to Trade Me. Trade Me subsequently submitted a report by Castalia commenting on the quantitative analyses: Castalia, “Trade Me/Limelight: Commentary of Economic Models” (31 January 2018). Ultimately, we did not place any weight on the quantitative analyses as we considered that there was too much uncertainty regarding key variables in the analyses to yield useful insights.

risk.⁴¹⁷ Trade Me submitted that such conduct would be contrary to its public statements about the intent behind the acquisition and its current practice. Trade Me said that, if its advertising is “must have”, there would be little benefit from foreclosing rivals and that, in any event, lack of access to Motorcentral would be unlikely to delay or prevent Facebook’s entry.⁴¹⁸

399. Trade Me submitted that it would also have no incentive to foreclose DMS rivals because the potential benefits of foreclosing DMS rivals are likely small given their small existing share of the DMS market. It estimated the available revenue from those rivals is around \$[] plus ancillary revenue.⁴¹⁹ Trade Me submitted that this potential benefit would be outweighed by the costs. It said that any conduct that imposed a cost or inconvenience on dealers would likely result in [].⁴²⁰ Trade Me also submitted that any upload delays would likely adversely affect the perception of Trade Me resulting in a reduction of advertising sales.⁴²¹

Others’ views

Advertising market

400. Rival listings platforms considered that Trade Me would have the incentive to foreclose. [] submitted that Trade Me would have the incentive to foreclose because Trade Me’s business model is based on obtaining as many listings as possible, and that the prospect of foreclosure would likely be a rationale for the acquisition alongside “insulating” Trade Me from potential future competition.⁴²²
401. [] submitted that Trade Me would have the incentive to foreclose its advertising rivals. It said that Trade Me would be able to recoup whatever (“minor”) costs it would incur engaging in foreclosure strategies.⁴²³
402. On the other hand, some industry participants told the Commission that it was unlikely that Trade Me would completely remove the ability to send listings data from within Motorcentral to rival listings platforms (with one participant noting that “the backlash from the dealers would be substantial”),⁴²⁴ although Trade Me could engage in other strategies that fall short of a total refusal to deal.

DMS market

⁴¹⁷ Trade Me’s Response to Letter of Unresolved Issues, 31 January 2018, at [113].

⁴¹⁸ Ibid, at [128]–[131].

⁴¹⁹ Ibid, at [59].

⁴²⁰ Ibid, at [67].

⁴²¹ For example, Trade Me’s Response to Letter of Unresolved Issues, 31 January 2018, at [80].

⁴²² [].

⁴²³ [].

⁴²⁴ Commerce Commission interviews with []; []; []; and [].

403. Several DMS providers suggested that Trade Me would benefit from dealers switching to the Motorcentral DMS as a result of foreclosure.⁴²⁵

Our assessment of the incentive to foreclose advertising rivals

404. As a starting point, we note that Trade Me would likely find it rational to seek to use its market power in the DMS market in ways that protect or enhance its market power in the advertising market. Trade Me would, however, be expected to balance any perceived costs of such conduct against the perceived benefits.
405. The main potential cost of foreclosure to Trade Me would be the loss of revenue in the DMS market if dealers switched away from Motorcentral in response to a perceived reduction in Motorcentral's quality, and a subsequent potential reduction in advertising revenue. For example, if a dealer highly valued uploading to a rival listings platform and Trade Me removed that option in Motorcentral or made it less convenient to do so, the dealer may switch to another DMS. Trade Me could, as a consequence, also lose revenue from the loss of sales of premium advertising and ancillary products (eg, MotorWeb) [].
406. The costs of any foreclosure conduct would vary according to the particular strategies Trade Me employed:
- 406.1 More obvious measures, such as removing the bulk upload option or the general data export function, would likely create the greatest cost exposure for Trade Me as these measures could negatively affect its reputation and motivate dealers to spend less on its products. We consider it unlikely that Trade Me would remove the general data export function or the bulk upload option for existing rivals. However, there may be limited costs to choosing not to facilitate listings to a new entrant as this would not be removing functionality from the Motorcentral DMS;
- 406.2 Less obvious measures would be less likely to result in any significant costs to Trade Me. For example, charging rival listings platforms to access listings data [] would raise rivals' costs without risking significant numbers of dealers switching away from Motorcentral. Providing a poorer quality upload feed to rivals (adding delays, restricting the data sent) while preferentially enhancing the upload feed to Trade Me would also be unlikely to prompt significant switching away from Motorcentral, especially where there are limited alternative DMSs and dealers would forego the enhanced integration with the 'must have' Trade Me if they switched.
407. Our view is that there would likely be a combination of strategies available to Trade Me that would be unlikely to incur significant costs but would materially harm existing and potential competition. For example, Trade Me could refuse to assist new entry into the advertising market (including by choosing not to facilitate uploads to

⁴²⁵ For example, Commerce Commission interviews with []; []; and [].

new entrants), impose [] charges to rivals to access listings data, refuse to promote rival listings platforms within Motorcentral while making the Trade Me platform more prominent, and preferentially enhance integration with Trade Me while degrading the quality of integration with other listings platforms.

408. To the extent that any reduction in quality may motivate dealers to switch DMS (such as by removing Motorcentral’s bulk upload function to rival listings platforms), there may be few or no viable alternative DMSs. If Trade Me simultaneously forecloses DMS rivals by degrading (or failing to improve) their interaction with Trade Me, dealers may not view other DMS products as being sufficiently attractive to switch to despite any reduction in Motorcentral’s quality. Given the “must have” status of Trade Me to dealers, an alternative DMS with inferior access to Trade Me would be unlikely to be attractive to dealers.
409. Against the costs of foreclosure, there are likely to be significant benefits to Trade Me.
- 409.1 Raising the costs of advertising rivals or making it more difficult for them to access listings data would likely make their offers less attractive. Trade Me may benefit from dealers that switch advertising spend away from rivals to Trade Me in response, although given Trade Me currently has about []% of revenue in the advertising market this gain would be limited. However, many dealers currently choose to advertise on other listings platforms in addition to Trade Me, given the low or zero price charged by these other listings platforms. By making those other listings platforms more difficult or costly to use, more dealers are likely to only use Trade Me, reducing the advertising stock of rival listings platforms and making the platforms less attractive to audiences. With smaller audiences, rival listings platforms are likely to become less attractive to dealers;⁴²⁶
- 409.2 The main benefit to Trade Me would likely be in changing market conditions to make it harder for rivals to enter and expand in the advertising market. The evidence shows that Trade Me []. Entry into the New Zealand market by a global player, especially one with an established audience based in New Zealand, could potentially unseat Trade Me from its current strong position in the advertising market and result in a large loss of market share and pricing power. Trade Me currently generates around \$[] per year in revenue from motor vehicle classified advertising, which it would likely wish to protect. As previously discussed, Motorcentral has a track record of facilitating entry by new listings platforms. Trade Me would therefore likely perceive substantial value in foreclosing potential

⁴²⁶ Trade Me submitted a report by Castalia in which it was submitted that Trade Me would not benefit from making any effort to become an exclusive listing platform – that is, by engaging in conduct which makes it less likely for dealers to list their vehicles for sale on other platforms. See Castalia ‘Economic Effects of the Proposed Trade Me and Motorcentral Merger’ (13 September 2017) at [2.3]. However, as we discuss above at paragraph 409, Trade Me would likely benefit from making rival listings platforms less competitive, as a decrease in the number of listings on a platform is likely to make the platform less attractive to audiences. Cross platform feedback loops are likely to exacerbate this effect.

competition, and we expect it would be prepared to incur some costs to delay or prevent new entry.

410. Trade Me submitted that using Motorcentral to foreclose rival listings platforms would be inconsistent with how it has operated DealerBase to date, stating that it had “never removed, degraded, or even altered the ability of DealerBase to send listings to other listings platforms, nor increased the price”.⁴²⁷ However, while dealers can use DealerBase to conveniently upload listings data to Trade Me, DealerBase does not appear to be designed to facilitate the upload of listings data to other listings platforms. It does not provide a bulk upload option to send data to other listings platforms, which means dealers would need to use the general data export option to do so.
411. Furthermore, Trade Me charges dealers \$55 a month to use the general data export option (except where a dealer buys the higher priced advertising packages)⁴²⁸ and that option is likely significantly more inconvenient than a bulk upload option. For example, it is not clear that dealers can set up automatic data exports to rival listings platforms and there appears to be some effort and technical expertise needed to set up the data export option.⁴²⁹ The additional cost and difficulty to send listings data to rival listings platforms from DealerBase is what we would expect to see given Trade Me’s general incentive not to assist its competitors (although this may not currently produce an anticompetitive effect, given that DealerBase does not currently have market power and rival listings platforms can access listings data from Motorcentral). Perhaps because of these difficulties, [] record of where [] receives listings from does not include DealerBase.⁴³⁰

⁴²⁷ Trade Me’s Response to Letter of Unresolved Issues, 31 January 2018, at [116].

⁴²⁸ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

⁴²⁹ See: Dealerbase “Web Services api.dealerbase.co.nz Overview”
<http://developer.dealerbase.co.nz/WebService/Default.aspx>.

⁴³⁰ [].

412. We considered what Trade Me’s internal documents said about its intentions following the acquisition. Some of these documents [redacted]. For example, Trade Me’s Motorcentral Acquisition Board document [redacted].⁴³¹ In response to that risk, the document stated that Trade Me would “[redacted]”. This is consistent with a Trade Me public statement in relation to the acquisition.⁴³² We note, however, that this statement does not touch on the range of foreclosure conduct we have concerns about, including imposing [redacted] charges to access listings data, degrading the quality of the feed to rival listings platforms while preferentially enhancing integration with Trade Me, and/or choosing not to assist new entry.

413. Trade Me’s Motorcentral Acquisition Board document also reflected Trade Me’s [redacted].⁴³³

414. Other internal documents suggest that [redacted]. Trade Me’s Motorcentral Acquisition Board document noted that [redacted].⁴³⁴ Likewise, Trade Me Board minutes record that “[redacted]”.⁴³⁵ We consider that these documents indicate that Trade Me would be unlikely to facilitate the upload of listings data to potential new entrants such as Facebook.

415. In an internal Trade Me email in which the acquisition of Motorcentral was discussed, a senior Trade Me executive stated that he was concerned that [redacted].⁴³⁶ [redacted]:

[redacted]

⁴³¹ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 22.
⁴³² Trade Me “Trade Me set to acquire Motorcentral” (11 July 2017) <https://investors.trademe.co.nz/news/media-releases/2017/trade-me-set-to-acquire-motorcentral/>.
⁴³³ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 18.
⁴³⁴ “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 18.
⁴³⁵ [redacted], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).
⁴³⁶ [redacted], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

416. In paragraph 270 above we quoted an internal Trade Me email in which the Head of Trade Me Motors noted that

“[]”. Additionally, in paragraph 275, we quoted Trade Me’s Motorcentral Acquisition Board document in which Trade Me stated that “[]”. Given Trade Me’s documented concern []].

417. A Motorcentral internal document also explored how Trade Me might benefit from control over Motorcentral’s DMS. The document noted that a benefit to Trade Me of a shareholding in Motorcentral would be

“[]”.⁴³⁷ As discussed above, we considered that Trade Me would likely perceive significant value in gaining control over the flow of vehicle listings data from Motorcentral, given that this control could be used to tilt the playing field in its favour.

418. The same internal document noted Motorcentral’s role in “[]”, including its “[]” programme, which in another document it described as a tool that “[]”.⁴³⁸ In relation to this [] role, the document noted:⁴³⁹

[]

419. We consider that this statement is consistent with

[] and ensuring that Motorcentral does not “[]” through its [] role.

420. Finally, we considered Trade Me’s submission that the

[]⁴⁴⁰ would prevent Trade Me engaging in foreclosure. []]. Trade Me submitted that this

⁴³⁷ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

⁴³⁸ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017).

⁴³⁹ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017).

⁴⁴⁰ []].

means it would not be in the interests of [] to foreclose rival listings platforms since it would reduce its revenues.⁴⁴¹ However, there are likely to be foreclosure strategies available to Trade Me that would not materially undermine []. Included among these are introducing a charge to rival listings platforms for accessing the listings data [] and choosing not to assist new entry into the advertising market.

421. Additionally,
[]. Accordingly, to the extent that it is profit-maximising for Trade Me to [], this may not []. We are therefore not satisfied that [] precludes Trade Me from engaging in foreclosure strategies.
422. Taking all of the above into account, we consider that Trade Me would likely have the incentive to foreclose existing and potential competition in the advertising market. We consider that the potential gains from foreclosure are likely to be substantial and the costs minimal – Motorcentral has developed a sticky dealer proposition and dealers are unlikely to abandon preferential access to Trade Me in response to relatively poorer access to secondary online classified advertising platforms. We consider that Trade Me’s incentive to foreclose potential competition to be particularly strong, given the disruptive impact that new entry could have on Trade Me and therefore the benefits that would accrue from delaying or preventing new entry.

Our assessment of the incentive to foreclose DMS rivals

423. Trade Me would likely find it rational to seek to use its market power in the advertising market in ways that would protect and enhance its position in the DMS market. Trade Me’s Motorcentral Acquisition Board document, which noted that Trade Me can [], supports this view.⁴⁴² Again, Trade Me would be expected to balance any perceived costs of such conduct against the perceived benefits.
424. The main potential cost to Trade Me of foreclosing rival DMSs is the risk that dealers using rival DMSs would reduce their Trade Me advertising spend. This might occur if foreclosure resulted in those dealers using other DMSs facing greater difficulty or cost to upload listings data to Trade Me, or if dealers sought to punish Trade Me by reducing their advertising spend with it. However, the costs of any foreclosure conduct would vary according to the particular strategies Trade Me employed.
- 424.1 A refusal to accept data uploads from existing rival DMSs would likely create the greatest cost exposure to Trade Me, as it could result in a loss of listings

⁴⁴¹ Trade Me’s Response to Letter of Issues, 14 September 2017 at [118].

⁴⁴² “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 22.

on Trade Me. However, given the “must have” status of access to Trade Me, dealers are more likely to switch DMS (to Motorcentral) or to use DealerBase to access Trade Me directly if their existing DMS faced increased costs of access. Nonetheless, such conduct could result in a loss of premium advertising revenue if dealers sought to punish Trade Me for this conduct, given evidence we received from Trade Me that [redacted].⁴⁴³

- 424.2 While refusing to accept data uploads from existing rival DMSs may carry some cost risk, we note that refusing to accept data uploads from new entrant DMSs would be unlikely to result in significant costs to Trade Me, as new entrants would be supplying few or no dealers.
- 424.3 More subtle measures, such as adding delay to data uploads, would be less likely to result in any significant costs, as Trade Me would continue to receive listings. Dealers regard Trade Me as “must have” and would be unlikely to significantly reduce demand as a result of any additional cost or inconvenience. To the extent that this conduct cannot be clearly attributed to Trade Me, dealers would be unlikely to be motivated to punish Trade Me by reducing purchases on premium advertising.
425. Our view is that there would likely be a combination of strategies available to Trade Me that would be unlikely to incur significant costs but would materially harm existing and potential DMS competition. For example, Trade Me could refuse to accept uploads from new entrants, charge existing DMS rivals to interact with Trade Me while degrading the quality of their interaction with Trade Me (eg, by adding delay or creating technical problems with the upload), and give privileged access to Motorcentral (eg, faster uploads or enabling uploads with a wider range of data, such as videos). These strategies would likely make entry and expansion significantly more difficult for rival DMSs while allowing Trade Me to avoid any significant costs.
426. In contrast, Trade Me is likely to obtain significant value from foreclosing rival DMSs:
- 426.1 First, to the extent that its conduct increases (as dealers switch to Motorcentral from rival DMSs) or maintains the number of dealers using Motorcentral, Trade Me would likely have a greater opportunity to promote premium advertising and ancillary products. [redacted].⁴⁴⁴ These gains would, however, be limited given that Motorcentral’s rivals currently do not hold a large market share.
- 426.2 Second, Trade Me would likely benefit from changing market conditions to make it harder for rivals to enter and expand. Motorcentral told us that [redacted] are a threat to it (as well as [redacted]), although it

⁴⁴³ [redacted], provided by email by Russell McVeagh to the Commerce Commission (21 February 2018).

⁴⁴⁴ See for example Application at [4.3]–[4.6]; “Trade Me Board Paper May 2017”, submitted as Confidential Appendix Four to Application, at 2.

changed its view on this during the course of the investigation).⁴⁴⁵ Trade Me also identified [].⁴⁴⁶ Trade Me is therefore likely to perceive a particularly significant benefit to foreclosing new entrants.

426.3 Third, foreclosing DMS rivals would likely reinforce a strategy to foreclose advertising rivals by limiting alternative sources of listings data. To the extent that dealers switch to Motorcentral as a result of foreclosure, Trade Me would gain control over a larger amount of listings data. Additionally, if any attempt to foreclose competition in the advertising market motivated dealers to switch away from Motorcentral, foreclosure in the DMS market would limit dealers' alternatives. The ability to reinforce a strategy to foreclose rival listings platforms would significantly increase the benefits of foreclosing DMS rivals, and therefore the incentive to do so.

427. We consider the combined benefits are likely to outweigh the costs of foreclosing rivals, and that Trade Me would therefore likely have the incentive to foreclose DMS rivals.

Conclusion

428. Accordingly, we consider that Trade Me would likely have an incentive to foreclose existing and potential competition in the advertising and DMS markets. The benefits, particularly from making it more difficult for new entrants to enter and expand, are likely to exceed any limited costs.

Effect on competition

429. We have concluded that Trade Me would likely have the ability and incentive to foreclose existing and potential competition in the advertising and DMS markets. We now consider whether that foreclosure would have the likely effect of substantially lessening competition in those markets due to vertical effects.

430. For the reasons below, we are not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the advertising and DMS markets due to vertical effects.

Parties' views

431. Trade Me submitted that the advertising and DMS markets are highly competitive and the threat of new entry, expansion, and disruption constrains both Trade Me and Motorcentral.⁴⁴⁷

⁴⁴⁵ [], provided by email by Webb Henderson to the Commerce Commission (19 September 2017); Commerce Commission interviews with Motorcentral (4 October 2017 and 15 February 2018); Letter from Motorcentral to the Commerce Commission (31 January 2018).

⁴⁴⁶ "Trade Me Board Paper May 2017", submitted as Confidential Appendix Four to Application, at 22.

⁴⁴⁷ See for example Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [156].

432. Trade Me submitted that it does not necessarily [] to be its closest competitive constraint.⁴⁴⁸ It submitted that it sets its price based on [].⁴⁴⁹ Trade Me submitted that it is not realistic that it could delay or prevent entry by Facebook given Facebook's size and resources.⁴⁵⁰
433. Trade Me submitted that independent dealers represent a large number of customers that would be attractive to potential entrants. Trade Me submitted that the growth of Motorcentral showed that any switching costs cannot be regarded as conditions that make it hard to enter or expand.⁴⁵¹

Others' views

434. [] submitted that foreclosure of [] would result in a substantial lessening of competition in the advertising market.⁴⁵²
435. [] noted that the high level of integration between Pentana and Carsales in Australia had disadvantaged [] and prevented it from expanding.⁴⁵³ [] also noted that even the fact of integration between Trade Me and Motorcentral would discourage competition in the DMS market, make other DMSs less attractive to dealers, and further strengthen Motorcentral's market position.⁴⁵⁴
436. Both [] and [] indicated that if Trade Me were to engage in foreclosure strategies, this could damage their businesses.⁴⁵⁵

Effect on competition in the advertising market

437. To assess the likely effect on competition in the advertising market due to vertical effects, we first considered the likelihood that Trade Me would face material competition in the advertising market absent the acquisition. This was necessary to understand the extent of any competition that could be lost as a result of Trade Me engaging in foreclosure conduct.
438. We then examined whether Trade Me's ability and incentive to foreclose would materially weaken the competition that the Trade Me platform would otherwise face, such that the acquisition would likely substantially lessen competition.

Likelihood of future competition

⁴⁴⁸ Trade Me's Response to Supplementary Letter of Issues, 21 November 2017, at [32]; Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [126].

⁴⁴⁹ Trade Me's Response to Letter of Issues, 14 September 2017, at [158]; Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [126].

⁴⁵⁰ Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [128].

⁴⁵¹ Ibid, at [164].

⁴⁵² [].

⁴⁵³ Commerce Commission interview with [].

⁴⁵⁴ Commerce Commission interview with [].

⁴⁵⁵ Commerce Commission interviews with [] and [].

439. Earlier in these reasons, we found that Trade Me has market power in the advertising market. It faces limited competition and is regarded as a “must have” by dealers. We also found that Need-a-Car is unlikely to develop into a stronger constraint on Trade Me. However, Trade Me’s market power has some vulnerability, given the threat that new entry poses. We therefore considered the likelihood of future competition from actual and potential competitors other than Need-a-Car.
440. Trade Me submitted that the “the threat of new entry, expansion, and disruption is ever present” in the advertising market.⁴⁵⁶ Trade Me also told the Commission that [], and discussed the potential threat posed by overseas competitors such as Facebook and Cox Automotive.⁴⁵⁷
441. Trade Me said that it considers that Facebook’s entry and growth into dealer listings in New Zealand is “[]”⁴⁵⁸ and, regardless of the acquisition, Facebook would impose an “actual and potential competitive constraint on Trade Me”.⁴⁵⁹ It said that “Facebook is already []”.⁴⁶⁰ After Facebook announced a partnership with both DMSs and listings platforms in the United States to offer dealer listings through Facebook Marketplace,⁴⁶¹ Trade Me submitted that its “strong expectation is that this will be launched in other countries in due course (and, in any event, likely within two years in New Zealand)”.⁴⁶²
442. []. For example, Trade Me Motors FY18 Strategy stated that “[]”.⁴⁶³
443. Facebook is likely to be a particularly significant threat to Trade Me given that it already has a significant audience in New Zealand which could potentially be converted into an active vehicle buying audience.⁴⁶⁴ It is also already present in the private listings market in New Zealand through its Marketplace app. In the United States, it has expanded into the dealer listings market by partnering with DMSs (and other listings platforms) to provide it with access to this dealer customer base on the other side of the platform. Facebook is therefore particularly well-positioned to

⁴⁵⁶ Trade Me’s Response to Letter of Unresolved Issues, 31 January 2018, at [156].

⁴⁵⁷ Trade Me’s Response to Letter of Issues, 14 September 2017, at [52]–[53]; Commerce Commission interview with Trade Me (25 September 2017).

⁴⁵⁸ [].

⁴⁵⁹ Trade Me’s Response to Letter of Unresolved Issues, 31 January 2018, at 1.

⁴⁶⁰ Trade Me’s Response to Supplementary Letter of Issues, 21 November 2017, at [66(b)]. See also Application at [9.12].

⁴⁶¹ Discussed above at paragraphs 76-78.

⁴⁶² Trade Me’s Response to Supplementary Letter of Issues, 21 November 2017, at [66(b)(v)].

⁴⁶³ [], provided by email by Russell McVeagh to the Commerce Commission (24 October 2017), at 4.

⁴⁶⁴ Andy Fyers and Henry Cooke “Facebook is New Zealand’s second-favourite leisure activity” (23 March 2017) <https://www.stuff.co.nz/technology/90005751/facebook-is-new-zealands-second-favourite-leisure-activity>.

overcome the cross-platform network effects which create a barrier to entry in the advertising market.

444. Facebook told the Commission in January 2018 that
[
]. It stated that,
[
].⁴⁶⁵
445. We note that, when Facebook implemented the Marketplace expansion to dealers in the United States, one of Facebook’s partners – [] – was only approached by Facebook one and a half months prior to the launch.⁴⁶⁶ This suggests Facebook could move quickly once it decides to enter. Given Facebook’s plans to [], we consider it is likely that it would expand to New Zealand within the near future.
446. We saw evidence that Cox Automotive could be a potential entrant into the New Zealand advertising market. Cox Automotive recently acquired DMS and listings platform businesses operating in Australia. On completion of those acquisitions, Cox Automotive said that it had “identified Australia and New Zealand as growth markets and the confidence in our people, our performance and our brands has enabled this significant investment in the future growth of our group of companies”.⁴⁶⁷
447. Cox Automotive’s Australian acquisitions
[]:⁴⁶⁸
[
]
448. We asked Cox Automotive whether it had any plans to enter the advertising market in New Zealand. It said that
[
].⁴⁶⁹
449. Trade Me also indicated that it sees potential competition from other sources. Trade Me referred to its 2017 Annual Report to support its view that Trade Me Motors operates in a “highly dynamic competitive environment”, including from the threat of new entrants and disruption. That report stated that “[Trade Me] have bigger,

⁴⁶⁵ Commerce Commission interview with Facebook (16 January 2018).

⁴⁶⁶ Email from [] to the Commerce Commission (20 February 2018).

⁴⁶⁷ Cox Automotive Media Release “CarsGuide, Dealer Solutions and Manheim to merge as part of Cox Automotive Australia” (9 August 2016) www.manheim.com.au.

⁴⁶⁸ [], provided by email by Russell McVeagh to the Commerce Commission (14 September 2017).

⁴⁶⁹ Commerce Commission interview with Cox Automotive (27 September 2017).

stronger and more active competitors than we've had at any time in Trade Me's history – including three global competitors making their presence felt in our local markets: Facebook, Amazon and Alibaba".⁴⁷⁰

[
].⁴⁷¹

450. [].⁴⁷² NZME told the Commission that

[
 473].

[
].⁴⁷⁴

[
]. On 22 February 2018, NZME announced that it is reinvesting in growth initiatives, including Driven.⁴⁷⁵

451. Bauer submitted that

[
].⁴⁷⁶

[
].⁴⁷⁷

452. While existing conditions in the advertising market are likely to make entry and expansion difficult, we consider that, absent the acquisition, Trade Me would likely face increased competitive constraints from new and/or expanded competitors. As we found earlier, this competition is unlikely to come from Need-a-Car, given that it does not have an established audience base and would likely struggle to develop such a base. However, the evidence suggests that new entry from an overseas competitor with an established audience base could occur in the near future and that such entry could be disruptive for Trade Me. []

453. The successful entry of such a competitor would likely introduce much greater competition into the advertising market, and dealers would benefit from the increased competition.

⁴⁷⁰ Trade Me's Response to Letter of Issues, 14 September 2017, at [163].

⁴⁷¹ Commerce Commission interview with Trade Me (25 September 2017).

⁴⁷² Commerce Commission interview with Trade Me (25 September 2017).

⁴⁷³ Commerce Commission interview with NZME (11 October 2017).

⁴⁷⁴ [], provided by email by NZME to the Commerce Commission (19 October 2017).

⁴⁷⁵ "NZME Full Year Results" (22 February 2018) NZX <https://www.nzx.com/announcements/314563>.

⁴⁷⁶ Submission from Bauer (14 August 2017), at [7.8].

⁴⁷⁷ [].

Likely effect of foreclosure on future competition

459. Having determined that, absent the acquisition, Trade Me would be likely to face material competition from new competitors, we consider whether the likely effect of the acquisition would be to delay or prevent this competition from developing such that a substantial lessening of competition is likely.
460. In Trade Me’s view, global competitors such as Facebook, Google and Amazon would not need to rely on listings data from Motorcentral to successfully enter and constrain Trade Me.⁴⁸³ Trade Me submitted that it is not realistic that it could harm Facebook given its size and resources.⁴⁸⁴ It said that Facebook already has a large audience which is likely to be attractive to dealers, and that a significant number of dealers are already advertising vehicles on their Facebook pages.⁴⁸⁵ Trade Me noted that there are already New Zealand businesses, such as BuddyBid, that have a business model premised on delivering listings from dealers to Facebook.
461. We acknowledge that these global competitors are in many cases well-resourced and some, such as Facebook, already have a large audience. Indeed, it is Facebook’s large audience which makes it a competitive threat to Trade Me. However, we are not satisfied that these factors would render any foreclosure ineffective.
462. As previously discussed, to be an effective competitor in the advertising market requires a listings platform that brings together both a significant audience and a significant volume of dealer listings. While it is possible that there are other ways of entering the advertising market, the recent instances of entry that we have observed occurred through the new entrant listings platform entering into a relationship with DMSs holding large amounts of listings data.
463. The two most recent significant new entrants in New Zealand – Driven and Need-a-Car – were both assisted in their entry through their relationships with Motorcentral. Facebook expanded into dealer listings in the US through partnerships with DMSs and other listings platforms.⁴⁸⁶ The evidence therefore suggests that new entrant listings platforms ‘solve’ the dealer side of the platform by entering into relationships with established DMSs. We expect that is because other methods of getting access to listings, such as directly approaching dealers to manually upload listings data, are substantially more difficult, risky and costly. Potential entrants are therefore likely to rely on access to listings data in Motorcentral to gain scale on the dealer side of the platform. The remaining DMSs in the market are unlikely to have the necessary scale in terms of dealer listings to effectively assist new entry.
464. Foreclosure of potential new entrants by making it more difficult or costly to access the listings data in Motorcentral would therefore likely materially raise the costs of

⁴⁸³ Commerce Commission interview with Trade Me (24 November 2017).

⁴⁸⁴ Trade Me’s Response to Letter of Unresolved Issues, 31 January 2018, at [128].

⁴⁸⁵ Ibid, at [130].

⁴⁸⁶ While Facebook has partnered with other listings platforms in the US to gain access to listings data, we do not consider this would be a plausible option in New Zealand, given Trade Me’s strong position in the advertising market and the limited competition it faces.

entry and expansion. These substantial additional costs of entry would be factored into a potential entrants' decision whether to enter.

465. Although global players may be well-resourced, increasing the cost and difficulty of entry is likely to make other investment opportunities more attractive, particularly given the size of the New Zealand advertising market. The likely effect of this is that new entry would be delayed or prevented, as potential entrants are dissuaded by the increased cost and difficulty of entry. We have not found any evidence to suggest that a potential new entrant such as Facebook would, in circumstances where access to listings data in Motorcentral is restricted, incur the cost and risk of changing the entry model that it has employed overseas to enter the relatively small New Zealand advertising market.
466. As set out in Trade Me's Motorcentral Acquisition Board document, part of Trade Me's rationale for the acquisition was that it would allow it to "[redacted]".⁴⁸⁷ Trade Me submitted that this was a reference to it [redacted].⁴⁸⁸ However, the same Board paper later goes on to recommend that Trade Me [redacted].⁴⁸⁹ In this context, and in light of other documentary evidence [redacted], we consider that Trade Me's reference to "[redacted]" supports the view that the acquisition would enable Trade Me to delay or prevent new entry and expansion.
467. We spoke with BuddyBid to explore Trade Me's submission that dealers could use its service to get their listings data to Facebook.⁴⁹⁰ BuddyBid explained that [redacted]. It said that [redacted]. BuddyBid also said that [redacted]. We therefore did not view BuddyBid and similar businesses as an answer to our concerns, given that Trade Me could equally foreclose such businesses.
468. We therefore consider that it is likely that Trade Me would delay or prevent new entry and expansion through the foreclosure conduct discussed earlier. Given the substantial competitive constraint that these new entrants would be likely to otherwise impose on Trade Me, we consider that the prevention and/or delay of their entry would be likely to substantially lessen competition.

⁴⁸⁷ "Trade Me Board Paper May 2017", submitted as Confidential Appendix Four to Application, at 2.

⁴⁸⁸ Trade Me's Response to Letter of Unresolved Issues, 31 January 2018, at [165].

⁴⁸⁹ "Trade Me Board Paper May 2017", submitted as Confidential Appendix Four to Application, at 16.

⁴⁹⁰ Commerce Commission interview with BuddyBid (13 February 2018).

Other constraints

469. We considered whether Trade Me would face other constraints in the advertising market such that, despite the loss of competition as a result of foreclosure, a substantial lessening of competition would be unlikely.
470. In this case, we considered whether Trade Me would be constrained from increasing prices to dealers if the price increase reduced the number of dealer listings which in turn undermined the platform's audience appeal. This dynamic could undermine Trade Me's ability to attract listings and the price it charges for them.
471. However, a more likely effect of the acquisition is that Trade Me's pricing to dealers would not materially increase in the factual, but would likely be higher relative to its pricing absent the acquisition. This is because Trade Me's current pricing is likely reflective of its existing market power, and a likely effect of the acquisition would be to protect that market power and preserve its prices. As such, Trade Me would be unlikely to lose a significant number of listings and therefore its audience appeal would remain undisturbed.
472. We also note that Trade Me's foreclosure of existing and potential competition in the advertising market would likely limit the options that that audience could switch to in the event that there were fewer listings on the Trade Me platform.
473. We also considered whether constraints from outside the advertising market would likely prevent a substantial lessening of competition. While we discussed above that print likely imposes some constraint in the advertising market, it is likely that any such constraint is weakening as the use of print advertising declines.⁴⁹¹ We also consider that the constraint from other types of online advertising is likely to be insufficient to counteract the anticompetitive effects.
474. As such, we consider that other constraints, either on their own or collectively, would not prevent a substantial lessening of competition in the advertising market.

Conclusion

475. Accordingly, we are not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the advertising market as a result of vertical effects.

The effect on competition in the DMS market

476. Earlier in these reasons, we found that Motorcentral currently has a large share of the DMS market and likely has market power. It faces limited existing competition. As such, it is likely that potential new entry into the DMS market would provide the

⁴⁹¹ We have not been provided with any clear evidence regarding the status of print advertising. However, Trade Me submitted that []: Commerce Commission interview with Trade Me (25 September 2017). Similarly, [] submitted that []: Commerce Commission interview with [].

strongest competitive constraint. In particular, Motorcentral identified [] as a threat. It also identified [] as a threat, and this is supported by its internal documents (although toward the end of our investigation it said that it did not consider [] to be a threat). In any event, the acquisition would [], leaving entry from overseas competitors as a key threat to Motorcentral.

477. In our analysis of the horizontal effects of the acquisition in the DMS market, we were not satisfied that new entry and expansion would be likely to satisfy the LET test (in part because of the likelihood that Trade Me would seek to foreclose DMS rivals). While we consider that new entry and expansion in the DMS market would be difficult and therefore could not be relied upon to counteract the anticompetitive effects of the loss of competition between DealerBase and Motorcentral, we consider that there is a real chance that, absent the acquisition, Motorcentral would face material competition from new entry and expansion in the near future.
478. As identified by [], this competition could emerge from overseas DMS suppliers seeking to enter the New Zealand DMS market. Trade Me's foreclosure conduct would likely make entry and expansion into the DMS market substantially more difficult for these potential new entrants than it would be absent the acquisition.
479. We consider it is likely that Trade Me's foreclosure conduct would delay or prevent new entry, as well as making it more difficult for existing rivals to expand. As such, we consider that foreclosure would be likely to materially weaken the competitive constraints on Motorcentral that it would likely have otherwise faced in the DMS market, resulting in a substantial loss of competition. This reduction in competition could manifest through higher prices, lower service quality or a reduction in the rate of innovation, leaving independent dealers worse off.
480. The foreclosure of DMS rivals would also reinforce a strategy to foreclose advertising rivals, as it would make rival DMSs less attractive and therefore would undermine or eliminate other DMSs as alternative sources of listings data. This would secure (and enhance) Motorcentral's position as the major source of dealer listings, increasing Trade Me's ability to use Motorcentral to foreclose competition in the advertising market.
481. Accordingly, we are not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the DMS market as a result of vertical effects.

Conclusion

482. The preceding sections have considered the likely horizontal and vertical effects of the acquisition by Trade Me of Motorcentral. While it is necessary to examine each of those potential effects in turn, the ultimate question we are required to consider is whether we are satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any market.

483. We are not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the DMS market due to each of horizontal and vertical effects, and in the advertising market due to vertical effects.
484. We consider that it is likely that Trade Me would develop DealerBase into a significant competitor to Motorcentral absent the acquisition, and that this competition would be lost with the acquisition. In addition, it is likely that Trade Me would use its market power in the advertising market to foreclose actual and potential competition and protect or enhance its market power in the DMS market. We consider that actual and potential competition in the DMS market would likely be adversely affected through the horizontal and vertical effects of the acquisition and that these effects are each likely to be substantial.
485. Further, Trade Me is also likely to have the incentive and the ability to use the market power it has acquired in the DMS market to foreclose actual and potential competition and protect or enhance its market power in the advertising market. We consider that the vertical effects of delaying or preventing entry and expansion of competitors in the advertising market are likely to be substantial.
486. The Commission is therefore not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the advertising and DMS markets in New Zealand.

Determination on notice of clearance

487. The Commission is not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
488. Pursuant to section 66(3)(b) of the Commerce Act 1986, the Commerce Commission determines to decline to give clearance to Trade Me Limited to acquire, directly or indirectly, 100% of the shares in Limelight Software Limited, trading as Motorcentral.

Dated this 8th day of March 2018

Dr Mark Berry
Chairman